

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

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5 UNITED STATES OF AMERICA,)
6 Plaintiff,)
7 vs.) Case No. 1:16CR224
8 BOGDAN NICOLESCU,)
9 RADU MICLAUS,)
10 Defendants.)

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12
13 CONTINUED TRANSCRIPT OF TRIAL PROCEEDINGS HAD
14 BEFORE HONORABLE JUDGE PATRICIA A. GAUGHAN, JUDGE
15 OF SAID COURT, ON MONDAY, APRIL 8TH, 2019,
16 COMMENCING AT 9:00 O'CLOCK A.M.

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18 Volume 11, Pages 2000 through 2248
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6 and

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18 Also present:

19 Doina Francu, Interpreter
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1		I N D E X			
2	<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Valentin Danet				
4	Direct Continued	2003			
5	By Mr. Goldberg		2010		
6	By Mr. O'Shea		2031		
7	Marius Matei	2034		2084	
8	By Mr. Goldberg		2060		
9	By Mr. O'Shea		2077		
10	Catalin Dima	2086		2155	
11	By Mr. Goldberg		2128		
12	By Mr. O'Shea		2143		2156
13	Donald Wertz	2157			
14	By Mr. O'Shea		2163		
15	Ashley Parton	2164			
16	By Mr. O'Shea		2175		
17	Clint Bertke	2176			
18	By Mr. O'Shea		2188		
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Mr. Valentin Dima - Direct Cont'd

P R O C E E D I N G S

THE COURT: Please be seated, and good morning, ladies and gentlemen.

Ladies and gentlemen, Mr. Duncan Brown is not present here this morning. He has another very important matter, and I have given him permission to attend.

So please understand that I have encouraged him to do this other matter, and he has my complete permission to do so.

Mr. McDonough?

MR. McDONOUGH: Thank you, your Honor.

VALENTIN DIMA

resumed the witness stand on behalf of the Government, being previously sworn, was examined and testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. McDONOUGH:

Q. Good morning, Mr. Dima.

A. Good morning.

Q. When we left off on Friday, I believe we were talking about e-mails. What was your e-mail address?

A. Keke.zete.

THE TRANSLATOR: Keke.zete @ GMX.com.

Q. Who did you receive e-mails from?

Mr. Valentin Dima - Direct Cont'd

1 MR. GOLDBERG: Objection.

2 Q. Did you send e-mails to anyone?

3 A. Yes.

4 MR. GOLDBERG: Objection.

5 THE COURT: Overruled.

6 Q. Who?

7 THE TRANSLATOR: At least to five other
8 members.

9 Q. Members of what?

10 THE TRANSLATOR: Among those were supporting
11 this fraud.

12 MR. O'SHEA: Objection.

13 THE COURT: Overruled.

14 BY MR. McDONOUGH:

15 Q. For what purpose were you sending e-mails to the
16 group?

17 THE TRANSLATOR: Information necessary for
18 us.

19 Q. Like what?

20 A. Credit cards, domains, posting information.

21 Q. Okay. Did you receive any instructions?

22 A. Yes.

23 Q. From whom?

24 A. From obe.

25 Q. What instructions?

Mr. Valentin Dima - Direct Cont'd

1 A. Like buying, hosting domains like I said.

2 Q. Who is your brother?

3 A. Catalin Dima.

4 Q. Does Catalin Dima have a nickname?

5 A. Yes.

6 Q. What was his nickname?

7 A. Linxstal.

8 Q. What was Catalin's e-mail?

9 A. Linxstal @ GMX.com.

10 Q. How long did you remain in this group?

11 A. About three years, around three years.

12 Q. Why did you leave? I'm sorry. Withdraw that. How
13 did you get your brother into the group?

14 MR. GOLDBERG: Objection.

15 THE COURT: I'm sorry.

16 MR. GOLDBERG: Objection, your Honor.

17 THE COURT: Overruled.

18 BY MR. McDONOUGH:

19 Q. Keep your voice up.

20 How did you get your brother involved into
21 this group?

22 THE TRANSLATOR: I put him in touch with
23 obe.

24 Q. Okay. When did you he have leave the group?

25 A. At the beginning of 2013?

Mr. Valentin Dima - Direct Cont'd

1 Q. Why?

2 A. Because I want a normal life and also —

3 Q. If you could keep your voice up.

4 A. Because I want a normal life, and I knew bad for
5 us.

6 Q. What do you mean you wanted a normal life?

7 THE TRANSLATOR: I wanted to have a
8 normal life like any other person, not to be stressed
9 out.

10 Q. Why were you stressed out?

11 THE TRANSLATOR: Because I was doing bad
12 things.

13 Q. How much money were you making doing bad things?

14 MR. GOLDBERG: Objection.

15 THE COURT: Sustained.

16 Q. What did you do after you left?

17 THE TRANSLATOR: I opened an online store.

18 Q. What did the online store do?

19 THE TRANSLATOR: I was selling different
20 items for the bedroom like pillows and bed covers and
21 things like that.

22 Q. Do you still do that?

23 THE TRANSLATOR: No. I don't use that
24 store, but I opened another store online. I also try for
25 uber, and I am also helping out my brother.

Mr. Valentin Dima - Direct Cont'd

1 Q. Do you have family?

2 A. Yes, I have wife.

3 Q. Do you have any children?

4 A. Not yet.

5 Q. What does your wife do?

6 A. Like an accountant but not exactly.

7 Q. Where does she work?

8 THE TRANSLATOR: At a company that deals
9 with paintings and decorations. It is called Benjamin
10 Moore.

11 Q. Benjamin Moore. Okay. All right.

12 What did you do with your laptop computer
13 that you used for crime?

14 THE TRANSLATOR: I throw away the hard
15 drive, and then I sold the laptop.

16 Q. When did you throw away the hard drive?

17 A. In 2013.

18 Q. How did you find out about the arrest of Bogdan
19 Nicolescu?

20 THE TRANSLATOR: Through a friend of
21 mine.

22 Q. How did you find out about the arrest of
23 Radu Miclaus?

24 THE TRANSLATOR: The same way through the
25 same means.

Mr. Valentin Dima - Direct Cont'd

1 Q. What's the last time you had contact with Bogdan
2 Nicolescu?

3 THE TRANSLATOR: In 2013.

4 Q. When is the last time you had contact with Radu
5 Miclaus?

6 THE TRANSLATOR: I didn't have too much of a
7 direct contact, probably at the same time I saw him the
8 last time.

9 Q. In February 2019, did you receive a summons from the
10 Romania National Police to appear before DIICOT,
11 D-I-I-C-O-T?

12 A. Yes.

13 Q. What did you do in response to that summons?

14 THE TRANSLATOR: I answered some questions.

15 Q. Before you answered questions, did you have to take
16 an oath?

17 A. Yes.

18 Q. Do you remember what questions you were asked?

19 THE TRANSLATOR: Overall, yes.

20 Q. Did you tell the truth?

21 A. No.

22 Q. Why did you lie?

23 THE TRANSLATOR: That was my first instinct.

24 Q. First instinct for what?

25 THE TRANSLATOR: I was afraid of

Mr. Valentin Dima - Direct Cont'd

1 repercussions and consequences.

2 Q. Afraid of repercussions or consequences like what?

3 A. Like going to prison.

4 Q. Like going to prison where?

5 THE TRANSLATOR: Either here or in Romania.

6 Q. Here or —

7 THE TRANSLATOR: Or in Romania.

8 Q. Was the FBI there?

9 A. Yes.

10 Q. After that, did you have a chance to meet with the
11 FBI?

12 A. Yes.

13 Q. Have we met before?

14 A. Yes.

15 Q. Where did we met?

16 A. In Bucharest.

17 Q. With the FBI?

18 A. Yes.

19 Q. Did you enter into a proffer letter with the
20 Government?

21 A. Yes.

22 Q. Did you have an attorney in Romania?

23 A. Yes, I had.

24 Q. Did the FBI ask you questions in Romanian in a
25 meeting when we met?

Mr. Valentin Dima - Cross

1 A. Yes.

2 Q. Did the Government give you a non prosecution
3 letter?

4 A. Yes.

5 Q. What did the Government promise you that we would
6 not do, or I'm sorry. Withdraw that.

7 What did the Government promise you?

8 THE TRANSLATOR: That I would not be
9 accused if I come here and say — tell the truth as a
10 witness.

11 MR. McDONOUGH: No further questions, your
12 Honor.

13 THE COURT: Mr. Goldberg, cross examination.

14 CROSS EXAMINATION

15 BY MR. GOLDBERG:

16 Q. Good morning, sir.

17 THE TRANSLATOR: Good morning.

18 Q. When you met with the Romanian police on February
19 19th, had you heard from any law enforcement prior to
20 that date about Bayrob?

21 A. Can you repeat the question, please?

22 Q. Prior to February 19, 2019, had any police tried to
23 speak with you regarding Bayrob?

24 A. No.

25 Q. And at the end of that meeting, did they ask you

Mr. Valentin Dima - Cross

1 would you come to the United States and testify, the
2 first meeting?

3 A. Yes.

4 THE TRANSLATOR: Yes. They asked me if I
5 was willing to do it.

6 Q. And during that first meeting, you understood that
7 they, the police and the FBI, were interested in
8 information about Mr. Miclaus and Mr. Nicolescu and
9 Mr. Danet, correct?

10 A. Yes.

11 Q. And you understood that they were being prosecuted
12 in the United States, correct?

13 A. Yes.

14 Q. And you wanted the meeting with an agreement to come
15 to the United States to testify about your first
16 statement?

17 A. I didn't understand exactly.

18 Q. At the end of that — you said you lied to the FBI,
19 right?

20 A. Yes.

21 Q. And to the Romanian National Police under oath,
22 right?

23 A. Yes.

24 Q. But at the end of that meeting, you agreed
25 that you would come to the United States to testify,

Mr. Valentin Dima - Cross

1 right?

2 A. Yes.

3 Q. No one accused you of being a liar during that
4 meeting, did they?

5 A. Yes.

6 Q. During that first meeting, no one accused you of
7 being a liar?

8 A. Yes, they did not.

9 Q. Did not. All right.

10 Now, you have testified completely
11 differently here in Court than you did under oath with
12 the Romanian police, correct?

13 A. No.

14 MR. McDONOUGH: Objection.

15 THE COURT: Overruled. Is that true, sir?

16 THE TRANSLATOR: Yes. As I said before
17 here —

18 BY MR. GOLDBERG:

19 Q. I am going to stop you because my answer was yes or
20 no, and the answer is yes, completely different.

21 A. Yes.

22 Q. Okay. Now, prior to being involved with the scheme
23 that you testified here today, you were previously
24 involved with your brother in internet fraud in the early
25 2000s, correct?

Mr. Valentin Dima - Cross

1 A. Yes.

2 Q. And that had nothing to do with these guys. That
3 was with your brother and some other guys, right?

4 A. No. I just put my brother in —

5 THE TRANSLATOR: I just put my brother in
6 touch with obe.

7 Q. No. I am talking about before that.

8 In 2003, 2002, you were involved in internet
9 fraud with your brother?

10 MR. McDONOUGH: Objection.

11 A. No.

12 THE COURT: Overruled. Is that true, sir?
13 Yes or no.

14 THE WITNESS: No.

15 BY MR. GOLDBERG:

16 Q. And you don't recall your brother or having his
17 laboratory or computers seized by the Romanian National
18 Police in 2003?

19 MR. McDONOUGH: Objection.

20 THE COURT: Sustained.

21 BY MR. GOLDBERG:

22 Q. Do you know whether your brother was involved in
23 internet fraud prior to 2003?

24 A. Yes.

25 Q. He was. But you had nothing to do with

Mr. Valentin Dima - Cross

1 that?

2 A. No.

3 Q. And the Romanian police seized his computers in
4 2003?

5 A. Yes.

6 Q. And he was involved with internet fraud in that he
7 was selling fake items on the internet in the
8 United States, correct?

9 MR. McDONOUGH: Objection.

10 THE COURT: Sustained.

11 BY MR. GOLDBERG:

12 Q. What was your — what kind of fraud — well, do you
13 know what your brother was doing that got him in trouble
14 in 2003?

15 A. No.

16 Q. Okay. Fair enough.

17 So what town did you grow up in?

18 A. In Bucharest.

19 Q. Near Bucharest. And you grew up with your brother
20 in the same house?

21 A. Yes.

22 Q. And you also had a friend by the name of Vaca,
23 correct?

24 A. Yes.

25 Q. And did you all live in the same neighborhood?

Mr. Valentin Dima - Cross

1 A. Yes.

2 Q. What about the Danet brothers, did you know them
3 growing up?

4 A. No.

5 Q. Okay. But you and Vaca — what is Vaca's real
6 name?

7 A. Victor.

8 Q. What's his last name?

9 A. Constantinescu.

10 THE TRANSLATOR: That's

11 C-o-n-s-t-a-n-t-i-n-e-s-c-u.

12 Q. Thank you. Okay.

13 You've testified that in 2013 — let me ask
14 you this: You indicated that you had — you indicated
15 that your brother's name was Linxstal?

16 A. Yes.

17 Q. Okay. And did you — and you indicated what your
18 name was — your GMX e-mail account was?

19 A. Yes.

20 Q. What was it?

21 A. Keke.zete.

22 Q. And did you provide anything to the FBI, the
23 Romanian National Police or anyone else to prove that
24 that was your e-mail?

25 A. No.

Mr. Valentin Dima - Cross

1 Q. You don't have any copies of your e-mails on
2 computers, right?

3 A. No.

4 Q. Did you give them the password to the e-mail
5 account?

6 A. No.

7 Q. What's the password to the e-mail account?

8 A. I don't remember.

9 Q. Okay. So there is many, many e-mails where we see
10 the name keke from — before 2013 that have come into
11 evidence in this trial, but you don't remember the
12 password of that account, correct?

13 A. We used long passwords.

14 Q. Okay. Well, did you try to find that password and
15 give it to the Government?

16 A. No. I don't remember the passwords so.

17 Q. Okay. So we are supposed to just believe you when
18 you say "I am keke, and I was involved in the Bayrob
19 Group" because you have no other proof, right?

20 A. Yes.

21 Q. So in 2013, you stopped being involved, you got —
22 you destroyed or threw away your hard drive?

23 A. Yes.

24 Q. Did you break it into pieces or just —

25 A. I just throw it.

Mr. Valentin Dima - Cross

1 Q. And you got rid of any other possible connection
2 between you and Bayrob, right?

3 THE TRANSLATOR: There was nothing else,
4 just the laptop.

5 Q. Okay. Did you go to the police at any time prior to
6 February of 2019, two months ago, to say, "hey, I know
7 something about this fraud"?

8 A. No.

9 Q. Something about this crime?

10 A. No.

11 Q. Okay. You knew a lot of people separate from
12 Bayrob that are involved in internet crime in Romania,
13 correct?

14 MR. McDONOUGH: Objection.

15 THE COURT: Sustained.

16 BY MR. GOLDBERG:

17 Q. Do you know anybody besides the guys you identified
18 in here that were in internet fraud in Romania?

19 MR. McDONOUGH: Objection.

20 THE COURT: Sustained.

21 BY MR. GOLDBERG:

22 Q. Okay. Now, you indicated in your testimony that you
23 spent time at Nicolescu's house, correct?

24 A. Yes.

25 Q. Didn't Vaca have a house near Nicolescu's?

Mr. Valentin Dima - Cross

1 THE TRANSLATOR: Yes. He had rented a house
2 together with other friends.

3 Q. And that was what, couple minutes away?

4 A. One-hour.

5 Q. One-hour away but closer than Bucharest?

6 A. No. It was closer to obe's house.

7 THE COURT: Would you repeat that?

8 THE WITNESS: It was closer to obe's house
9 near Brasov.

10 Q. So that was a place where you stayed as well,
11 correct?

12 A. Yes.

13 Q. Who else lived at obe's house when you were
14 there?

15 A. My brother, Bogdan Nicolescu, and two other
16 people.

17 Q. So there were other people at the house when you
18 were there?

19 A. Yes.

20 Q. Now, you indicated that you started a couple of
21 internet businesses after you got out of being involved
22 with Bayrob?

23 A. Yes.

24 Q. Okay. And those businesses sold items on the
25 internet?

Mr. Valentin Dima - Cross

1 A. Yes.

2 Q. Now, I know that your first instinct, as you
3 testified, is to lie, but those businesses, you are
4 telling this Court that you didn't take credit cards
5 and commit frauds and steal money from 2013 through
6 today?

7 THE TRANSLATOR: I didn't do anything else
8 illegal.

9 Q. Okay. Now, over the weekend — part of your deal
10 with the United States was to come here with your
11 brother, right?

12 A. Yes.

13 Q. Okay. As long as you were allowed to travel
14 together, stay together, be together, that was part of
15 your deal?

16 A. Yes.

17 Q. And if you weren't allowed to do that, you wouldn't
18 be here, right?

19 THE TRANSLATOR: I would have come anyway.

20 Q. Okay. But your attorney, talking to the U.S.
21 Attorney's Office, made sure that was part of the deal,
22 right?

23 THE TRANSLATOR: Yes.

24 Q. And you and your brother are staying at the same
25 hotel?

Mr. Valentin Dima - Cross

1 A. Yes.

2 Q. And are you sharing a room?

3 A. No.

4 Q. But did you spend this past weekend together?

5 A. Yes.

6 Q. And was anybody else from this case at the hotel
7 with you?

8 A. No.

9 Q. And you and your brother — did you leave the
10 hotel?

11 A. Yes.

12 Q. And you and your brother discussed this case over
13 the weekend?

14 THE TRANSLATOR: Not about what was
15 discussed here because I was not allowed.

16 Q. But you talked about the case, right?

17 A. Of course.

18 Q. Of course. And you didn't talk about what you said
19 in Court, but you talked about what could come up in
20 Court?

21 THE TRANSLATOR: We talked just in general.
22 I can't say in particular what about.

23 Q. It is only natural to talk about what may happen in
24 the courtroom, right?

25 A. Yes.

Mr. Valentin Dima - Cross

1 Q. And you've known about the arrests since the day
2 they happened, right, September 2016?

3 A. Yes.

4 Q. And you have talked to your brother, to Vaca, about
5 this case during that time?

6 A. Yes.

7 Q. And you have discussed in detail about what would
8 happen if you got brought into it, correct?

9 THE TRANSLATOR: I don't remember exactly
10 details what we discussed, but we did discuss about the
11 case.

12 Q. Okay. Besides Vaca and your brother, who else did
13 you discuss this case with prior to coming to Court
14 today?

15 A. I talked with a friend of mine.

16 Q. Who was that?

17 A. You want the name?

18 Q. Yes.

19 A. Radu Munteanu.

20 Q. Okay. What was his e-mail?

21 THE TRANSLATOR: Radu Munteanu,
22 M-u-n-t-e-a-n-u.

23 Q. I am going to ask you some e-mail addresses, and you
24 tell me if they are familiar.

25 A. Okay.

Mr. Valentin Dima - Cross

1 Q. Primo 2 Mario 39 @ Yahoo?

2 A. No. I don't know this name.

3 MR. GOLDBERG: May I approach the witness,
4 your Honor?

5 THE COURT: Sure.

6 BY MR. GOLDBERG:

7 Q. I am going to show you a list of e-mails. I will
8 have this marked. Okay.

9 Do you recognize that one?

10 A. No, no.

11 Q. Is that a Romanian word?

12 A. Yes.

13 Q. What does it say?

14 A. In English?

15 Q. Yes.

16 A. Dick.

17 Q. Okay. And you don't recognize that e-mail?

18 A. No.

19 Q. Okay. What about this, next one, say it. What is
20 it?

21 A. No. No I don't know.

22 Q. K-i-c-k-v-l @ Yahoo, don't know that one?

23 A. No.

24 Q. What about the next one?

25 A. No.

Mr. Valentin Dima - Cross

1 Q. What does that say?

2 A. It is a name.

3 Q. It is a name?

4 A. Yeah.

5 Q. What's the name?

6 A. Liviul.

7 Q. And you are not familiar with liviul.

8 A. No.

9 Q. What's the last name?

10 A. Popoviciul.

11 Q. Okay. What about dzeu?

12 A. No.

13 Q. Don't know that one?

14 A. No.

15 Q. Okay. What about — let's go down to — natiune you
16 said you know, right?

17 A. Yes.

18 Q. Okay. Linxstal you said you know.

19 A. I know.

20 Q. What about checozaur?

21 A. No.

22 Q. What about rubyconstruct?

23 A. No.

24 Q. Ajutoare, do you know that one?

25 A. No.

Mr. Valentin Dima - Cross

1 Q. Gheatadelux.

2 A. No.

3 Q. W-x-y-z-k-l, do you that one?

4 A. Yeah, this is Vaca.

5 Q. Did you give that e-mail to the U.S. Attorney's
6 Office?

7 A. I don't remember.

8 Q. Okay. What about W-x-y-z-2-k-l @ AOL.com?

9 A. This is Vaca, too.

10 Q. What about amightysa @ AOL.com?

11 A. I know who it is, but I never talk to him.

12 Q. Well, who is it?

13 A. We name it Amy. But I think this is —

14 Q. What about mrxtornado @ gmail?

15 A. No, I don't know.

16 Q. What about r-e-d-i-c-e-x-s @ GMX.com, that's
17 you?

18 A. Yes.

19 Q. What about scama @ GMX?

20 A. I don't know.

21 Q. What about ra 101 Putin @ GMX.com?

22 A. This one I know, but I don't know who is it.

23 Q. What about w t w x @ GMX?

24 A. No.

25 Q. What about qweaxy, q w e a x y @ GMX.com?

Mr. Valentin Dima - Cross

1 A. Sounds familiar, but I don't know.

2 Q. What about Minolta 9797?

3 A. This is Radu.

4 Q. What about the w t w 554 @ GMX.com?

5 A. I don't know.

6 Q. Okay. Just very briefly, let's talk about your
7 statement to the police in Romania on the — on the 19th
8 of February.

9 A. Yes.

10 Q. Okay. Now, this was about a month and-a-half
11 ago?

12 A. Yes.

13 Q. And up to this point, you hadn't heard from anybody
14 about Bayrob?

15 A. No.

16 Q. Just other people that you talked to privately but
17 no police?

18 A. Exactly.

19 Q. Okay. So you are brought in. Did you bring an
20 attorney with you?

21 A. No.

22 Q. And do you recognize what I am showing you as
23 Defendant's Exhibit S?

24 A. Yes.

25 Q. Okay. Is that your name at the top?

Mr. Valentin Dima - Cross

1 A. Yes.

2 Q. Is that your signature at the bottom?

3 A. Yes.

4 Q. It is your signature that, in fact, appears on each
5 page, correct?

6 A. Yes. That's mine. Yes, yes.

7 Q. Okay. Now, you do have an attorney in Romania,
8 correct?

9 A. Yes.

10 Q. What's his name?

11 A. Dragos Pagaru.

12 Q. He wasn't with you when went on the 19th?

13 A. No.

14 Q. But he was with you when you went on the 22nd?

15 A. Yeah.

16 Q. Back to your statement, just to go over a couple
17 things on your statement, I am going to play — who
18 asked you questions, the FBI or the Romanian National
19 Police?

20 A. The Romanian.

21 Q. I am going to pretend to be the Romanian National
22 Police, and you are going to be you, and you are going
23 to answer the questions the way you answered them that
24 day.

25 THE TRANSLATOR: I don't know how to answer

Mr. Valentin Dima - Cross

1 the way I answered then because at that time I was
2 lying.

3 Q. Well, that's fine. We know your first instinct is
4 to lie. We are just going to go through your statement.
5 Okay?

6 THE TRANSLATOR: Yes. So what answers do
7 you want me to give you?

8 Q. Right from your statement. You signed every page
9 of this statement. You said everything in here,
10 correct?

11 A. Yes.

12 Q. Do you want to take a moment and go through and read
13 it?

14 A. Yeah.

15 Q. Go ahead. Tell me when you are ready.

16 (Pause.)

17 A. I am ready.

18 Q. Is there anything in that document that you did not
19 say that day?

20 A. No.

21 Q. Okay. Did you take an oath to tell the truth?

22 A. Yes.

23 Q. Okay. The same exact oath that you took here on
24 Friday to tell the truth, right?

25 THE TRANSLATOR: According to the procedures

Mr. Valentin Dima - Cross

1 that they were in Romania.

2 Q. "So help me God" is what you said?

3 A. Yes.

4 Q. And you signed right under the "God." Is your
5 signature not right under the word "God"? What's that
6 word mean right there?

7 A. God.

8 Q. Okay. What does that say?

9 A. It is not my signature, but that's my signature
10 there.

11 Q. Your signature is at the bottom though?

12 A. Yes.

13 Q. All right. So regarding the testimony, "I attest
14 law enforcement says what do you know about Bogdan
15 Nicolescu?"

16 What did you say?

17 A. "I don't know."

18 Q. Did you say "it doesn't ring a bell"?

19 THE TRANSLATOR: "The name doesn't tell me
20 anything."

21 Q. Okay. So would that be an accurate translation?

22 THE TRANSLATOR: Not quite.

23 Q. "What do you know about Radu Miclaus?"

24 What was your answer?

25 THE TRANSLATOR: "The name doesn't tell me

Mr. Valentin Dima - Cross

1 anything."

2 Q. What do you know about Tiberiu Danet, Danet
3 Tiberiu?

4 THE TRANSLATOR: The name doesn't tell me
5 anything.

6 Q. What do you know about Valentin Danet?

7 THE TRANSLATOR: Name doesn't tell me
8 anything.

9 Q. You told the police that you know — after you were
10 shown pictures — I am going to strike the question.

11 You were shown pictures, correct?

12 A. Yes.

13 Q. And after you were shown pictures, you said, "ah, I
14 know Nicolescu from a house my friends rented in Bosnov,"
15 correct?

16 A. Yes.

17 Q. "And Vaca asked me to buy the oil for a Mazda that
18 belonged to Nicolescu. That's where I remember him
19 from," correct?

20 A. Yes, that's true.

21 Q. So you signed the end of the agreement or the end of
22 the statement?

23 A. Yes.

24 Q. Right. And that's your signature that appears on
25 it?

Mr. Valentin Dima - Cross

1 A. Yes.

2 Q. And I haven't done anything to take that copy.

3 That's what you signed, right?

4 A. Yes.

5 Q. Okay. Except for the exhibit sticker up there, S.

6 Okay. And then, we can agree you met these guys from the

7 U.S. Attorney's Office, Mr. McDonough and another

8 U.S. Attorney?

9 A. Yes.

10 Q. And they were able to promise you something, right?

11 You changed your story from that to what you said here in

12 Court?

13 A. Exactly.

14 Q. With no proof other than your word that you had any

15 particular e-mail address, or you had any particular

16 involvement with Bayrob?

17 MR. McDONOUGH: Objection.

18 THE COURT: Sustained.

19 BY MR. GOLDBERG:

20 Q. You just agreed to change what you said, what

21 you swore under oath from one thing to something

22 else?

23 MR. McDONOUGH: Objection.

24 THE COURT: Overruled.

25 THE TRANSLATOR: No. I didn't change. I

Mr. Valentin Dima - Cross Cont'd

1 just chose to tell the truth.

2 BY MR. GOLDBERG:

3 Q. Okay. Well, you changed. You said one thing on the
4 19th, and you said something completely opposite on the
5 22nd?

6 THE TRANSLATOR: Yes. I said the first time
7 I lied, and now I came to tell the truth.

8 Q. Okay. Well, once you got something in return, you
9 told a different story. Can we agree with that?

10 A. Yes.

11 Q. Okay. Thank you.

12 A. You are welcome.

13 MR. GOLDBERG: I don't have any other
14 questions, your Honor.

15 THE COURT: Mr. O'Shea.

16 CROSS EXAMINATION CONTINUED

17 BY MR. O'SHEA:

18 Q. Good morning. Do you speak English?

19 A. Not so good.

20 Q. Okay. Have you ever met Radu Miclaus in your
21 life?

22 A. Yes.

23 Q. When?

24 THE TRANSLATOR: I believe it was in 2012.

25 Q. Where?

Mr. Valentin Dima - Cross Cont'd

1 THE TRANSLATOR: A location near the City of
2 Pitesti, P-i-t-e-s-t-i.

3 MR. O'SHEA: Can you put up Exhibit 1854.

4 BY MR. O'SHEA:

5 Q. Do you see Exhibit 1854, sir?

6 A. Yes.

7 Q. Okay. Do you remember being asked questions about
8 this exhibit on Friday?

9 A. Yes.

10 Q. Isn't it true that you never saw this exhibit before
11 you came here to the United States?

12 A. Yes.

13 Q. Okay. And as you sit here right now without looking
14 at the exhibit —

15 MR. O'SHEA: Can you take it down for a
16 second?

17 Q. — you don't remember any of the exact e-mails
18 without looking at this exhibit, right?

19 THE TRANSLATOR: Some of them I remember.

20 Q. But there are a lot of e-mails in there, and they
21 had to show you those e-mails when you came here, right,
22 these guys?

23 THE TRANSLATOR: I don't understand the
24 question.

25 Q. When you got here to America, they had to show you

Mr. Valentin Dima - Cross Cont'd

1 this exhibit and point to this e-mails, these lawyers,
2 right?

3 THE TRANSLATOR: Yes.

4 Q. How did you find out about the arrests?

5 THE TRANSLATOR: A friend informed me about
6 it.

7 Q. Okay. Is it a fair statement that a lot of people
8 knew about the arrests?

9 MR. McDONOUGH: Objection.

10 THE COURT: Sustained.

11 BY MR. O'SHEA:

12 Q. Did your friend tell you how he found out about the
13 arrests?

14 THE TRANSLATOR: Yes. I remember that he
15 said that he found out through the interpreter or from a
16 friend who is here in America.

17 Q. Was it about the — was it around the same time that
18 they got arrested?

19 A. Probably maximum one month after that.

20 Q. Okay. Prior to making your deal with the American
21 Government, were you afraid of going to prison?

22 A. Yes.

23 Q. Do you have a family?

24 A. Yes, I have.

25 Q. Did you get the impression that if you did not

Mr. Matei - Direct

1 cooperate you might go to prison?

2 MR. McDONOUGH: Objection.

3 THE COURT: Sustained.

4 BY MR. O'SHEA:

5 Q. Do you know what an oath is?

6 A. Yes.

7 MR. O'SHEA: Nothing further, your Honor.

8 THE COURT: Any redirect?

9 MR. McDONOUGH: No, your Honor.

10 THE COURT: You may step down, sir.

11 THE WITNESS: Thank you. Thank you, Ma'am.

12 THE COURT: Please call your next witness.

13 MR. McDONOUGH: Your Honor, the

14 United States of America calls Marius Matei.

15 Mr. Matei?

16 MARIUS MATEI

17 called as a witness by and on behalf of the Government,

18 being first duly sworn, was examined and testified

19 as follows:

20 DIRECT EXAMINATION

21 BY MR. McDONOUGH:

22 Q. Good morning. Could you please state your first
23 name or your given name, and spell it for the benefit of
24 our court reporter?

25 A. Marius, M-a-r-i-u-s.

Mr. Matei - Direct

1 Q. Could you please state your last name or family
2 name, and spell it for the benefit of our court
3 reporter?

4 A. Matei, M-a-t-e-i.

5 Q. Did you commit any computer crime with anyone in
6 this courtroom?

7 A. Yes, I did.

8 Q. Who?

9 A. Bogdan.

10 Q. Would you please point out Bogdan?

11 A. He is the person at the middle of the
12 table.

13 Q. Could you please describe what he is
14 wearing?

15 A. Glasses and a blue shirt.

16 Q. Is he wearing a tie?

17 A. No.

18 Q. Is he at the front table or back table?

19 A. At the front table.

20 MR. McDONOUGH: Your Honor, may the
21 record reflect this witness has identified the Defendant
22 Bogdan.

23 THE COURT: Nicolescu.

24 MR. McDONOUGH: Bogdan Nicolescu.

25 THE COURT: Record may so reflect.

Mr. Matei - Direct

1 BY MR. McDONOUGH:

2 Q. How long have you known Bogdan Nicolescu?

3 A. Before 2007.

4 Q. Did he have any nicknames?

5 A. In real life, we would call him obe.

6 Q. And outside of real life, did he have any
7 nicknames?

8 A. Master Fraud.

9 Q. Did you commit computer crimes with anyone else
10 besides obe or Master Fraud in this courtroom?

11 A. Yeah, the person in the back, Radu.

12 Q. Could you please point out Radu?

13 A. He is at the second table on the left side.

14 Q. Could you please describe what he is wearing?

15 A. Also blue shirt.

16 Q. Is he wearing glasses?

17 A. No.

18 Q. Is he wearing a tie?

19 A. No.

20 MR. McDONOUGH: Your Honor, may the record
21 reflect this witness has identified the Defendant Radu
22 Miclaus?

23 THE COURT: Record may so reflect.

24 BY MR. McDONOUGH:

25 Q. How long have you known Radu Miclaus?

Mr. Matei - Direct

1 A. Almost the same period.

2 Q. Do you recall who you met first?

3 A. Bogdan.

4 Q. Where did you grow up in Romania?

5 A. Mostly in Bucharest.

6 Q. Where did you go to school?

7 A. In Bucharest.

8 Q. How far did you go in school?

9 A. It was a neighborhood high school.

10 Q. Okay. Did you have parents?

11 A. Yes.

12 Q. What happened in high school with your parents?

13 MR. GOLDBERG: Objection.

14 THE COURT: Overruled.

15 A. My mom died.

16 Q. When did your mom die?

17 A. In the last grade of high school.

18 Q. What happened after your mom died your last year of
19 high school?

20 A. Sorry?

21 Q. May I approach the witness, your Honor?

22 THE COURT: Yes.

23 A. My father —

24 THE COURT: Would you like me to take a
25 brief recess?

Mr. Matei - Direct

1 MR. McDONOUGH: Yes, your Honor.

2 THE COURT: Folks, we will take a brief
3 recess. Remember the admonitions.

4 All rise for the jury.

5 (Recess had.)

6 THE COURT: Please be seated. You may
7 continue, Mr. McDonough

8 BY MR. McDONOUGH:

9 Q. What did your father do after your mother
10 died?

11 A. He tried seeking another woman.

12 Q. Okay. Did you have any other family?

13 A. There was an aunt.

14 Q. Near your house?

15 A. In the house, no. I was left with my brother.

16 Q. Okay. How old is your brother compared to
17 you?

18 A. He is three years older.

19 Q. Okay. After high school, did you go to the
20 university?

21 A. Yes. I went to university, but I quit after one
22 year.

23 Q. What did you study at the university?

24 A. Something with welding metals at some point.

25 Q. I couldn't understand what you said.

Mr. Matei - Direct

1 A. Something with welding metals at some point.

2 Q. Welding metals?

3 A. Yes.

4 Q. Where did you live after you dropped out of the
5 university?

6 A. In my parents' flat, apartment.

7 Q. Who was living there with you?

8 A. My brother.

9 Q. Where did your father go?

10 A. I don't know.

11 Q. Okay. How did you feel at that time?

12 A. Drugs.

13 Q. Did you end up using drugs?

14 A. Yes.

15 Q. What drugs did you use?

16 A. Weed, ketamine, and ecstasy.

17 Q. What is weed?

18 A. Marijuana.

19 Q. And what is ecstasy?

20 A. Some pills.

21 Q. And what is ketamine, k-e-t-a-m-i-n-e?

22 A. Horse drug tranquilizer. I don't know exactly,
23 something for animals.

24 Q. An animal?

25 A. Yes.

Mr. Matei - Direct

1 Q. A tranquilizer?

2 A. Yes.

3 Q. How long did you use that?

4 A. One year or three years.

5 Q. How long did you use ecstasy?

6 A. Not many.

7 Q. How long did you use weed?

8 A. For a long time.

9 Q. Where did you meet Bogdan Nicolescu a/k/a Master
10 Fraud a/k/a obe?

11 MR. GOLDBERG: Objection.

12 THE COURT: Overruled.

13 THE WITNESS: First time I met him, Bogdan,
14 through a friend of mine.

15 BY MR. McDONOUGH:

16 Q. Who is the friend?

17 A. He is called Vaca.

18 Q. Vaca?

19 A. Yes.

20 Q. Did you say what city?

21 A. No, in Brasov we met.

22 Q. Brasov?

23 A. Yes.

24 Q. What were you doing in Brasov?

25 A. When I first met him?

Mr. Matei - Direct

1 Q. Yes.

2 A. It was a ski trip.

3 Q. Okay. How did you start committing crime with
4 Vaca?

5 A. After sometime my friend Vaca, also, he propose that
6 I meet him, Bogdan, for this purpose.

7 Q. Where did you go?

8 A. Also in Brasov.

9 Q. Whose house?

10 A. Yes, to his house.

11 Q. Whose house?

12 A. Bogdan's house.

13 Q. What did you take to Bogdan's house in
14 Brasov?

15 A. I was with my computer so he can set it up.

16 Q. What computer did you have, what type?

17 A. A laptop, I don't remember now.

18 Q. Okay. How did Bogdan set up your computer?

19 A. He installed the Linux base system operating.

20 Q. L-i-n-u-x?

21 A. Yes.

22 Q. How did Bogdan install it?

23 A. He used his computer first to get it out and then
24 put it on my computer.

25 Q. Besides that Linux, how else did Bogdan set up your

Mr. Matei - Direct

1 computer?

2 A. He installed windows, and there was VM ware
3 software.

4 Q. What does that do?

5 A. That is emulating more PCs and one PC.

6 Q. Doing what with the PCs?

7 A. Emulates more PCs.

8 Q. Okay.

9 A. And one PC, virtual PCs.

10 Q. Virtual PCs?

11 A. Yes.

12 Q. Virtual machines?

13 A. Yes.

14 Q. What else?

15 A. And he gave me instructions how to use it.

16 Q. What instructions did Bogdan give you to use
17 the Linux, the virtual machines on your laptop or
18 computer?

19 A. He gave me precise instructions. At some point, I
20 have to write it down in a text file, how to start it.
21 He insist on having a long password and everything, each
22 step.

23 Q. Who insisted on you having a long password?

24 A. Bogdan did.

25 Q. Over time how did you communicate with Bogdan?

Mr. Matei - Direct

1 A. Through e-mail and chat mostly.

2 Q. What was your nickname for chatting?

3 A. Where we chat in the workplace, it was Natiuning.

4 Q. Natiuning?

5 A. Natiuning.

6 Q. That was you?

7 A. Yes.

8 Q. What was Bogdan's nickname when you were chatting
9 with him?

10 A. In the workplace, it was Master Fraud.

11 Q. How do you know that was Master Fraud?

12 A. At some point, I stood next to him and saw him type
13 it from the computer.

14 Q. Where were you when you saw Bogdan typing on the
15 computer?

16 A. At his place.

17 Q. Whose place?

18 A. Bogdan's place.

19 Q. Do you know what type of computer Bogdan had?

20 A. Desktop PC.

21 Q. Do you know the brand or the case?

22 A. Yes, I know the case it was a Fractal especially
23 designed.

24 Q. F-r-a-c-t-e-l?

25 A. Yes.

Mr. Matei - Direct

1 Q. Fractal design case?

2 A. Yes, which is especially made for noise reduction.

3 Q. Noise reduction?

4 A. Yes.

5 Q. You have seen this before?

6 A. Yes.

7 Q. What color was it?

8 A. Black.

9 Q. Was the word "Fractal" anywhere on the case?

10 A. I don't remember.

11 MR. McDONOUGH: Your Honor, the Government
12 would ask permission for this witness to stand off the
13 witness stand with the Court's permission.

14 THE COURT: He may.

15 BY MR. McDONOUGH:

16 Q. Showing you what has been marked for identification
17 as Government's Exhibit 2038, do you recognize what this
18 is?

19 A. This is the case.

20 Q. What case?

21 A. The case of Bogdan's computer.

22 Q. How do you recognize it?

23 A. At his recommendation, I also bought one, so I
24 know.

25 Q. Okay. Is the name "Fractal" on this case?

Mr. Matei - Direct

1 A. Do you want me to look? Yes.

2 Q. Where is "Fractal" on this case?

3 A. On the back of the case.

4 Q. You may take the stand.

5 You bought a computer, a Fractal computer as
6 well?

7 A. The case.

8 Q. What was your role in committing these computer
9 crimes with Bogdan Nicolescu?

10 A. I received some duties, something to do for the
11 whole group, and in exchange, I was allowed to use the
12 tools.

13 Q. What tools did you use?

14 A. Mainly the SOCKS page.

15 Q. I'm sorry. What page?

16 A. Proxy page.

17 Q. Do you know what SOCKS is?

18 A. It is a proxy.

19 Q. How did you use that page?

20 A. Every time I would do something, I would use one of
21 the proxies.

22 Q. And what were you doing?

23 A. First step was to create eBay accounts. Then I
24 bought hostings. I was helping to create e-mail
25 accounts. Also, he would tell me what to do.

Mr. Matei - Direct

1 Q. How often were you at Bogdan's house in
2 Brasov?

3 A. I was quite a few times.

4 Q. How long would you stay there for the longest
5 time?

6 A. One week.

7 Q. Okay. How many hours a day would you work for that
8 week?

9 A. 16 hours.

10 Q. 16 hours —

11 A. A day.

12 Q. A day?

13 A. Yes.

14 Q. Did Bogdan have a gmail account?

15 A. Yes. He had one with w b w.bogdan.

16 MR. McDONOUGH: Ms. Chandler, would you
17 please bring up Government's Exhibit 29?

18 BY MR. McDONOUGH:

19 Q. Do you recognize this?

20 A. Yes. This is in trying to create a secure
21 connection for chat.

22 Q. Do you know what was the platform, how you
23 communicated with Bogdan Nicolescu?

24 A. We used the Pidgin a-m.

25 Q. What was the e-mail address for Bogdan?

Mr. Matei - Direct

1 A. Bogdan.w b w @ gmail.com.

2 Q. How did you keep track of credit cards that were
3 used by the group?

4 A. We had a tool where all the credit cards appeared,
5 and then we had a place where we would connect what we do
6 with each credit card.

7 Q. Did you comment on that page?

8 A. Yes, I did.

9 MR. McDONOUGH: Can you please pull up
10 Government's Exhibit 1204? Can you zoom in on the top
11 third of that document?

12 BY MR. McDONOUGH:

13 Q. Do you recognize this?

14 A. Yes.

15 Q. What is it?

16 A. This is the table with credit cards.

17 Q. Do you see your nickname on here?

18 A. Yes.

19 Q. Where?

20 A. On row 6, 7, 9.

21 Q. Would you please highlight row 6, 7, 9. Anywhere
22 else?

23 A. Yes, 12, 13, 17, 18, 19.

24 Q. How would you get to this page from your
25 computer?

Mr. Matei - Direct

1 A. With an address that I received from Bogdan.

2 Q. All right. What are the notes that you are writing
3 in column 3, notes?

4 A. We have noted what we did with the credit cards.

5 Q. Row 6, what did you do with that credit card?

6 A. Three shopping but —

7 Q. Okay. Shopping?

8 A. Maybe web posting. I don't know the exact
9 name.

10 Q. Okay. How about line 7, what's that note?

11 A. That I used the credit card.

12 Q. Okay. Line 9?

13 A. I used that domain name.

14 Q. Domain name, that's a website?

15 A. Enoin.com, I used it there.

16 Q. Lines 12 and 13?

17 A. Bought posting.

18 Q. How about line 17 through 19?

19 A. Bought posting.

20 Q. Do you see some other nicknames in that notes
21 column?

22 A. Yes.

23 Q. Do you know who those people are?

24 A. Yes.

25 Q. Who is Minolta?

Mr. Matei - Direct

1 A. Minolta is Radu.

2 Q. Who is Linx, L-i-n-x.

3 A. Linx, it is a friend, Catalin Dima.

4 Q. Catalin Dima?

5 A. Yes.

6 Q. Okay. If we could go line 4 and 5, what is that
7 note proasta, p-r-o-a-s-t-a?

8 A. That's the credit card is not good.

9 Q. How about looking down to line 26, what does the
10 word mort mean, m-o-r-t?

11 A. Also not good.

12 Q. All right. What would I use these credit cards to
13 purchase?

14 A. Whatever we needed: Phone numbers, domains,
15 postings.

16 Q. Okay. Could you use these credit cards to do
17 shopping yourself?

18 A. But we never did.

19 Q. Why not?

20 A. Shopping in a store?

21 Q. Right, shopping in a store, buying shoes, buying
22 clothes, buying items.

23 A. I don't know why. We were worried we would expose
24 ourselves.

25 Q. You would expose yourselves. How did you stay

Mr. Matei - Direct

1 unexposed?

2 A. Using Bogdan's tools.

3 Q. All right. How did you get on to the internet from
4 your computer?

5 A. Also using Bogdan's tools.

6 Q. Can you describe a tool?

7 A. Yes. We connect through a wireless network
8 connection.

9 Q. How did you connect to a wireless network?

10 A. Using an antenna to the neighborhood.

11 Q. Where did you receive the antenna?

12 A. Where do I see it?

13 Q. Where was it placed?

14 A. Inside my house.

15 MR. McDONOUGH: May I approach the witness,
16 your Honor?

17 THE COURT: Of course.

18 BY MR. McDONOUGH:

19 Q. You have zone something like this before,
20 Government's Exhibits 1415?

21 A. Yes. That is an the antenna example.

22 Q. Okay. Where would you get the antenna?

23 A. From Bogdan.

24 Q. All right. Was the antenna, was it configured in
25 any way?

Mr. Matei - Direct

1 A. Physically?

2 Q. Yes, physically.

3 A. I know that bracket was specially put there by
4 Bogdan to mount it on a photo tripod.

5 Q. Which bracket was specially put?

6 A. This one. (Indicating.)

7 Q. Who specially put a bracket on there?

8 A. Bogdan did.

9 Q. And what purpose did this bracket that Bogdan put on
10 here serve?

11 A. To mount it on a photo tripod, so he can aim it to
12 the —

13 Q. What's a photo tripod?

14 A. Tripod where you put the photo camera to take
15 pictures.

16 Q. How many legs did the tripod have?

17 A. Three.

18 Q. Where did this bracket go?

19 A. On top of it instead of the camera like this, and
20 you point.

21 MR. McDONOUGH: Let the record reflect the
22 witness is moving his right hand in a left and right
23 motion?

24 BY MR. McDONOUGH:

25 Q. Did you have one of those?

Mr. Matei - Direct

1 A. Yes.

2 Q. Where did you have it in your house?

3 A. In the living room, in the bedroom, on the other
4 side of the apartment, on a balcony.

5 Q. Did you see an antenna like that at anyone else's
6 house?

7 A. No. I don't remember seeing one.

8 Q. Okay. How long were you committing crimes as part
9 of this group?

10 A. Before 2010, somewhere between 2007 and 2010.

11 Q. All right. Did you know if Bogdan Nicolescu had a
12 girl friend?

13 A. Yes.

14 Q. Do you recall her name?

15 A. Simona.

16 Q. Where did you see Simona?

17 A. At his place, and one time I drove her from
18 Bucharest to his place.

19 MR. McDONOUGH: May we have Government's
20 Exhibit 20, Ms. Chandler?

21 BY MR. McDONOUGH:

22 Q. Do you recognize this photograph?

23 A. I recognize Simona.

24 Q. You mentioned you were at Bogdan Nicolescu's house
25 in Brasov?

Mr. Matei - Direct

1 A. Yes.

2 Q. And there is a city, is it outside of Brasov —

3 A. It is outside.

4 Q. What's the name of that place outside Brasov?

5 A. Rasnov.

6 Q. And did he have any other houses you were at?

7 A. I was at Brasov, and then he moved to Harman.

8 Q. H-a-r-m-a-n?

9 A. Yeah.

10 Q. All right. You were at the house in Harman?

11 A. Yes.

12 Q. Could you describe that house?

13 A. It has a space living downstairs and bedroom with
14 the kitchen upstairs.

15 Q. If you were on the street looking at the house,
16 describe it.

17 A. It was a long driveway with a brick wall on the
18 left, and he had a pole right in the street.

19 MR. McDONOUGH: Government's Exhibit 1419,
20 page 5, Ms. Chandler, and if we could zoom in on the
21 photograph, please?

22 BY MR. McDONOUGH:

23 Q. Do you recognize this photograph?

24 A. Yes. This is the entrance to the house.

25 Q. What does this photograph depict?

Mr. Matei - Direct

1 A. I'm sorry?

2 Q. What does1 this photograph depict or show?

3 A. It showed the entrance to the house, the gate, the
4 yard, and that's the wall I was mentioning.

5 Q. There is a red arrow you can touch?

6 A. This is the driveway going to the house.

7 Q. Can you point the arrow to Bogdan's house?

8 A. This one.

9 Q. So is this picture from —

10 A. I think it is inside the house.

11 MR. McDONOUGH: You can take it down,
12 please.

13 BY MR. McDONOUGH:

14 Q. Did you ever engage in any team building
15 activities?

16 MR. GOLDBERG: Objection.

17 THE COURT: Overruled. Do you understand
18 the question, sir?

19 THE WITNESS: Yes.

20 BY MR. McDONOUGH:

21 Q. What was the team building activity?

22 A. Bogdan had the idea at some point to celebrate
23 Thanksgiving Day.

24 Q. Where did you celebrate Thanksgiving Day?

25 A. At his father's hotel.

Mr. Matei - Direct

1 Q. Where was his father's hotel?

2 A. It is near Pitesti.

3 Q. Where is Pistesti, P-i-s-t-e-s-t-i?

4 A. Somewhere on the left of Brasov.

5 Q. You can move the arrow there. Did you go to Pitesti
6 for the Thanksgiving Day?

7 A. Yes, I did.

8 MR. GOLDBERG: Objection.

9 Q. Is Thanksgiving Day a holiday in Romania?

10 A. No.

11 THE COURT: Overruled.

12 BY MR. McDONOUGH:

13 Q. Who was at the Thanksgiving Day party at Bogdan
14 Nicolescu's father's hotel?

15 A. It was me, Bogdan, my friend Vaca, also Catalin
16 Dima.

17 Q. Okay.

18 A. And others.

19 Q. What did you do at the Thanksgiving Day party?

20 A. We had stuffed turkey and alcohol and also play
21 poker.

22 Q. Okay. When did you leave the group?

23 A. In 2014.

24 Q. Why?

25 A. I quit drugs, and I got a job.

Mr. Matei - Direct

1 Q. No more weed?

2 A. No.

3 Q. No more ecstasy?

4 A. No.

5 Q. No more ketamine?

6 A. No.

7 Q. How did you support yourself?

8 A. I have a job, a steady job.

9 Q. What is your steady job?

10 A. I am doing GDPR at the hotel.

11 Q. What is GDPR?

12 A. GDPR is general data protection regulation.

13 Q. What is a general data protection regulation?

14 A. I make sure that people's personal information is
15 safe, and they can interact and verify the validity.

16 Q. Is that a law in the European Union?

17 A. Yes, from 2015.

18 Q. Okay. Where do you work?

19 A. At a hotel in a resort near Brasov.

20 Q. At a hotel in a resort near Brasov?

21 A. Yes.

22 Q. And that deals with privacy?

23 A. Mostly.

24 Q. Anyone else at the hotel work besides you in this
25 GDPR privacy?

Mr. Matei - Direct

1 A. No.

2 Q. What did you do with your laptop after you left the
3 group?

4 A. I took out the hardware, the hard disk, and
5 destroyed the computer.

6 Q. I'm sorry. You did what?

7 A. Throw the computer away.

8 Q. How did you destroy the computer?

9 A. The hard drive, the computer I just gave it to a
10 neighbor, the computer without the hard drive.

11 Q. Computer you gave away?

12 A. Yes, yes.

13 Q. What did you do with the hard drive?

14 A. The hard drive, I destroyed it with a hammer.

15 Q. Destroyed it with a hammer?

16 A. Yes.

17 Q. What did you do with the pieces?

18 A. I throw them out from a mountain.

19 Q. You threw them out?

20 A. Yes, from a mountain.

21 Q. On a mountain?

22 A. From a mountain.

23 Q. In February 2019, did you receive a summons?

24 A. Yes.

25 Q. Did you appear before the DICOTT with the RNP and

Mr. Matei - Direct

1 FBI in Bucharest?

2 A. Yes.

3 Q. Were you under oath?

4 A. Yes.

5 Q. Were you asked questions?

6 A. Yes.

7 Q. Did you tell the truth?

8 A. No.

9 Q. Why not?

10 A. To get a chance and stay with my family.

11 Q. To get a chance to stay with your family. Who is
12 your family?

13 A. My wife and my child.

14 Q. How long you been married, how many years?

15 A. For two years.

16 Q. How old is your daughter?

17 A. Almost two years.

18 Q. Almost two years. Okay. After that, did you have a
19 chance to meet with the FBI, myself, and another
20 U.S. Attorney in Bucharest in Romania?

21 A. Yes.

22 Q. Did the FBI ask you questions?

23 A. Yes.

24 Q. Did you enter into a proffer agreement with the
25 United States Government?

Mr. Matei - Direct

1 A. Yes.

2 Q. Did you have an attorney in Romania?

3 A. Yes.

4 Q. Did the Government make any promises to you?

5 A. My government?

6 Q. Did the United States Government make any promises
7 to you?

8 A. Yes.

9 Q. What was the promise?

10 A. That I come to testify in Court.

11 Q. Yeah. We promised you we would not prosecute you in
12 a prosecution letter.

13 A. Yes.

14 Q. If you came and told the truth?

15 A. Yes.

16 Q. And did the Government fly you here?

17 A. Yes.

18 Q. Put you up in a hotel?

19 A. Yes.

20 Q. Paid your per diem for meals and such?

21 A. Yes.

22 MR. McDONOUGH: No further questions.

23 THE COURT: Mr. Goldberg, cross?

24 MR. GOLDBERG: Thank you.

25 - - - - -

Mr. Matei - Cross

1 CROSS EXAMINATION

2 BY MR. GOLDBERG:

3 Q. Mr. Matei, you indicated that you were on a number
4 of drugs?

5 A. I was, yes.

6 Q. All right. During the time that you were
7 involved with the crimes that you have admitted to
8 here today?

9 A. Yes.

10 Q. Okay. And when you met with the FBI in February —
11 on February 22nd of this year, were you still using
12 ketamine?

13 A. No.

14 Q. Were you still using ecstasy?

15 A. No.

16 Q. Marijuana, any of those drugs?

17 A. I quit in 2014.

18 Q. Okay. So if the testimony you gave today about
19 actually watching Mr. Nicolescu on his computer typing
20 Master Fraud wasn't in your statement that you gave to
21 the FBI, it wouldn't be a result of you being on drugs;
22 it would be a result of them not taking good notes?

23 MR. McDONOUGH: Objection.

24 THE COURT: Sustained.

25

Mr. Matei - Cross

1 BY MR. GOLDBERG:

2 Q. You didn't tell the FBI when you met with them on
3 February 22nd that you saw Mr. Nicolescu using the name
4 Master Fraud, did you?

5 A. I don't think so.

6 Q. You don't think you did, right? But you are saying
7 it here today.

8 A. Yes.

9 Q. Because you know what the Government wants for you
10 to say that he is Master Fraud, right?

11 MR. McDONOUGH: Objection.

12 THE COURT: Sustained.

13 BY MR. GOLDBERG:

14 Q. You know what this case is about, right?

15 MR. McDONOUGH: Objection.

16 Q. You know what this case is about. Mr. Nicolescu is
17 on trial, correct?

18 A. Yes.

19 Q. And the Government wants to establish that he is
20 Master Fraud in all these e-mails. You know that,
21 right?

22 A. Yes.

23 Q. Okay. So you don't tell the Government on the 22nd
24 of February that "I saw him using the name Master Fraud,"
25 right?

Mr. Matei - Cross

1 A. I was under shock, I didn't tell them.

2 Q. You didn't say that, did you?

3 A. No.

4 Q. But then, you come into Court in front of the jury,
5 and then you say, oh, I saw him using the name Master
6 Fraud, right?

7 A. Yes.

8 Q. Because now you are telling the truth?

9 A. Yes.

10 Q. And you know what an oath means, and you are going
11 to follow an oath, right?

12 A. Yes.

13 Q. And we can agree that you took an oath on the 19th
14 of February, three days before you talked to the FBI and
15 Mr. McDonough and promised to tell the truth right hand
16 to God, right?

17 A. Yes.

18 Q. And you lied right in their face, right?

19 A. Yes.

20 Q. Just like your lying in the faces of this jury
21 today?

22 A. No.

23 MR. McDONOUGH: Objection.

24 THE COURT: Answer may stand.

25

Mr. Matei - Cross

1 BY MR. GOLDBERG:

2 Q. Okay. You identified Exhibit 1415 as a directional
3 antenna, correct?

4 A. Yes.

5 Q. And this was part of the equipment that was
6 necessary to conduct your part or any part of the Bayrob
7 fraud, correct?

8 A. You have to have that.

9 Q. You have to have one of these. If you don't have
10 one of these, you couldn't connect to the internet
11 through someone else's Wi-Fi, correct?

12 A. You could connect to one of the members of the
13 group.

14 Q. You could connect to one of the members of the
15 group's Wi-Fi?

16 A. If I don't have an antenna, someone else with the
17 group would have one.

18 Q. So you would have to go through the internet to
19 connect to someone else's antenna?

20 A. Yes.

21 Q. But the people involved in this everybody had one of
22 these, correct?

23 A. Not at the time. Bogdan help us.

24 Q. I'm sorry?

25 A. Bogdan insisted to help so everybody should have

Mr. Matei - Cross

1 one.

2 Q. Right, including Bogdan?

3 A. (No response.)

4 Q. Now, you've got a nickname outside of this, and your
5 nickname is hack, right?

6 A. Yes.

7 Q. And that's not because you — it is because you are
8 good with computers, right?

9 A. I think so, yes.

10 Q. And that nickname wasn't because of anything you did
11 with Bayrob; it was a nickname you had before you met
12 Mr. Nicolescu?

13 A. Yes.

14 Q. And these are self-taught skills, right?

15 A. Yes.

16 Q. Okay. And you earned the nickname hack not because
17 you were able to do legitimate things on the internet but
18 because you were able to hack into systems and equipment
19 that you are not supposed to be on?

20 MR. McDONOUGH: Objection.

21 A. No.

22 THE COURT: Overruled.

23 BY MR. GOLDBERG:

24 Q. I mean, that's what you did before you got involved
25 with Bayrob?

Mr. Matei - Cross

1 A. Hacking is different.

2 Q. I'm sorry.

3 A. Hacking is a different thing.

4 Q. Hacking is a different meaning in Romania than it
5 does in America?

6 A. Maybe say hacking that is related to internet
7 crime.

8 Q. When they call somebody that had just general
9 mediocre — well, how did you get the name hack. Because
10 you had good computer skills, right?

11 You have known your way around programming
12 languages and equipment?

13 A. At that point, no.

14 Q. You just got the name hack because it fits
15 you?

16 A. No. It was some dial-up accounts were involved.

17 Q. I'm sorry?

18 A. Dial-up accounts when you use the modem with the
19 phone to connect to the internet.

20 Q. Dial-up accounts?

21 A. Yes.

22 THE COURT: Oh, dial-up account?

23 THE WITNESS: Yes.

24 Q. That's how you got the name hack?

25 A. Yes.

Mr. Matei - Cross

1 Q. Because you were able to use the dial up connection
2 to get into systems you weren't supposed to be in?

3 A. To connect to an internet because it was a big thing
4 to connect to the internet.

5 THE COURT: Sir, I'm going to ask you to
6 keep your voice up, please.

7 THE WITNESS: Okay. So it was a big thing
8 to connect to internet in that period with these dial-up
9 accounts.

10 BY MR. GOLDBERG:

11 Q. So dial-up, there was nothing illegal about dialing
12 up?

13 A. Yes, but getting those accounts was illegal.

14 Q. Getting which accounts?

15 A. To connect to the internet.

16 Q. Okay. Now, listen to this very carefully.

17 This had nothing to do with Bayrob,
18 right? Dialing up had nothing to do with Bayrob.
19 Dialing is from 20 years ago.

20 A. Yeah. But the nickname was from there.

21 Q. Okay. So the nickname hack was being able to
22 dial-up and get into systems you were not supposed to be
23 in, right?

24 A. Just connecting to the internet and getting to
25 accounts.

Mr. Matei - Cross

1 Q. Getting accounts that you weren't supposed to
2 get?

3 A. Yes.

4 Q. Okay. Thank you very much.

5 You have got a relationship with Vaca?

6 A. Yes.

7 Q. What's his real name?

8 A. Victor Constantinescu.

9 Q. You talk to him about this case?

10 A. Yes.

11 Q. You talk to him about what happened in this case?

12 A. About the case, yes.

13 Q. You talk to him about testifying here?

14 A. Yes.

15 Q. Okay. And you talk to him about — did you talk to
16 him about what happened to Mr. Nicolescu and Mr. Danet
17 and Mr. Miclaus when they were arrested? Did you call
18 him up —

19 A. No. He was the one who told me.

20 Q. He told you, and this you talked about it?

21 A. Just that they were arrested.

22 Q. And that's all you talked about, just the fact they
23 were arrested?

24 A. Mainly.

25 Q. All right. So when you met with the U.S. Attorney's

Mr. Matei - Cross

1 Office and you claimed that you were natiuning on all
2 these e-mails, did you provide them any proof like in the
3 form of your e-mails that came or registration of your
4 name or anything like that?

5 A. No.

6 Q. They showed you e-mails with the name Natiuning,
7 right?

8 A. Yes.

9 Q. And they showed you exhibits with the name
10 Natiuning, right?

11 A. Yes.

12 Q. And that's when you said, "oh, that's me. I am
13 natiuning," right?

14 A. Yes.

15 Q. Because when you went to the police department on
16 the 19th, they asked you who is natiuning, and what did
17 you say?

18 A. I don't know.

19 Q. And they asked you who is Master Fraud, what did you
20 say?

21 A. No.

22 Q. No. When you went to the police department —

23 A. I don't know.

24 Q. I don't know. What about Catalin Dima and Valentin
25 Dima. You know them, too?

Mr. Matei - Cross

1 A. Yes.

2 Q. And Catalin Dima is even more of a computer expert
3 than you?

4 A. Yes.

5 Q. They don't call him hack though?

6 A. No.

7 Q. So before you went into the police department on the
8 19th, the first time, did you talk to Catalin Dima before
9 going in?

10 A. No.

11 Q. Did you talk to any of these guys before you went
12 in?

13 A. To his brother.

14 Q. You have talked about what you are going to say,
15 no?

16 A. No. About what's going on.

17 Q. About what?

18 A. About what's going on.

19 Q. Right, right. And you talked about what kind of
20 questions they may ask you, right?

21 A. No.

22 Q. Well, this was — February of 2019 was six years
23 after you say you left this group, right?

24 A. What?

25 Q. You left the group what year?

Mr. Matei - Cross

1 A. '14.

2 Q. 2013. So five years later, right?

3 A. Yes.

4 Q. And you talked to Valentin Dima prior to going and
5 talking to the police, right?

6 A. Yes.

7 Q. And you knew when they called you in that
8 Mr. Nicolescu was on trial, that he was going to trial
9 for committing these acts?

10 A. We talked. We didn't know for sure.

11 Q. Are you familiar with — do you know the name
12 Danet?

13 A. No.

14 Q. Never heard —

15 A. I heard the name, but I don't know the person.

16 Q. So you don't know Tiberiu Danet or Valentin
17 Danet?

18 A. No.

19 Q. Who else did you talk to between the time you got
20 your subpoena or your summons to go into the police
21 station on the 19th and then going in?

22 A. Just Valentin and after the subpoena with his
23 brother after we went to the Court.

24 Q. Then you all talked together?

25 A. Yeah.

Mr. Matei - Cross

1 Q. And did you have a lawyer when you went into the
2 police station?

3 A. No.

4 Q. But you got a lawyer afterwards, right?

5 A. Yes.

6 Q. Same lawyer as those guys?

7 A. No.

8 Q. You got your own lawyer, right?

9 A. Yes.

10 Q. Okay. And we can agree that the story that you told
11 the police and the FBI on the 19th is completely opposite
12 of what you are saying here today?

13 A. Yes.

14 Q. And when you were in the police station on the 19th,
15 after you gave them all the information that you said you
16 knew, which was nothing, they said, hey, will you come to
17 the trial and testify?

18 A. Yes.

19 Q. Yeah. And you were willing — well, actually you
20 weren't willing to do it because you were afraid to
21 fly?

22 A. Yes.

23 Q. And you also said because you took all kinds of
24 drugs, and you still have side effects?

25 A. Yes.

Mr. Matei - Cross

1 Q. Okay. And that's true?

2 A. Yes.

3 Q. Okay. So you lied about other stuff on the 19th,
4 but you didn't lie about being afraid to fly and having
5 side effects of drugs?

6 A. Yes, I didn't lie.

7 Q. Side effects like what, paranoia, fear, panic
8 attacks?

9 A. Fear, yes, panic attacks, yes.

10 Q. Is anything more serious than having the U.S.
11 Attorney's Office threaten to prosecute you?

12 MR. McDONOUGH: Objection.

13 THE COURT: Sustained.

14 BY MR. GOLDBERG:

15 Q. Were you afraid of being prosecuted.

16 A. Yes.

17 Q. Did that make you even more panicky?

18 A. Yes.

19 Q. So you were willing to play ball with them and say
20 what they needed you to say, right?

21 MR. McDONOUGH: The objection.

22 THE COURT: Overruled.

23 THE WITNESS: I mean, what I can to stay
24 with my family.

25

Mr. Matei - Cross

1 BY MR. GOLDBERG:

2 Q. Right. As a lot of people would, right?

3 A. I guess so.

4 Q. But the fact is you are a liar, right?

5 A. Now?

6 Q. Well, you are a liar in your life, right? You have
7 been a liar?

8 A. No.

9 Q. You never lied?

10 A. I lied, but I considered myself from 2014 till
11 now.

12 Q. Okay. I am going to hand you what has previously
13 been marked as Defendant's Exhibit T. Do you recognize
14 that?

15 A. Yes.

16 Q. Take a look at all the pages, and make sure they are
17 correct. And I will ask you a couple of questions.

18 Is that the statement you gave under oath to
19 the Romanian police and the February — on February 19,
20 2019?

21 A. Yes.

22 Q. Six weeks ago or so, yes?

23 A. I don't know —

24 Q. Just last February, February 19th?

25 A. Yes.

Mr. Matei - Cross

1 Q. And were you promised anything in return for signing
2 — saying answering those questions and signing that
3 statement?

4 A. No.

5 Q. Now, does your signature appear on that document?

6 A. Yes.

7 Q. On every page?

8 A. Yes.

9 Q. Does it appear —

10 A. Yes.

11 Q. Right here. Okay. And what's the word right above
12 it?

13 A. God.

14 Q. God?

15 A. Yes.

16 Q. That's your oath to God that you are telling the
17 truth?

18 A. Yes.

19 Q. Like the one you took this morning?

20 A. Yes.

21 Q. Same exact one basically, right?

22 A. Different comment.

23 Q. Yeah, but swear to tell the truth, very simple,
24 right? You can explain if it is not?

25 A. No, same thing.

Mr. Matei - Cross

1 Q. Okay. All right. I am going to ask you a couple
2 specific questions about this.

3 They ask for — I am looking down here —
4 they asked what address, nicknames, telephone numbers
5 do you use. You said your nickname and address was
6 what?

7 A. I give my actual e-mail account I remember and my
8 phone name.

9 Q. Your name at gmail and your phone?

10 A. Yeah.

11 Q. And they asked you what was Bogdan N? You said you
12 don't remember what Bogdan N used; only that it had the
13 name Bogdan in it?

14 A. Yes.

15 Q. Then they asked you, do you recognize Natinuing GMX,
16 Natinuing aim, Linxstal GMX, Keke GMX, amightysa at
17 gmail, what did you say in answer to that?

18 A. I said I don't know.

19 Q. You never heard?

20 A. This is what I said.

21 Q. And they asked, do you have a GMX account, and you
22 said no?

23 A. Yes.

24 Q. All lies according to you?

25 A. Yes.

Mr. Matei - Cross

1 Q. Because after they showed you the Natinuing e-mails
2 then you said oh, yeah, that's me?

3 A. Yes.

4 Q. Because you don't want to go away from your wife and
5 your family, correct?

6 A. Because this is the truth.

7 Q. Well, you are saying that, but the reason you are
8 here is that you were given a promise that you don't have
9 to go away?

10 A. Yes.

11 Q. And you weren't given that promise when you talked
12 to the police the first time, but the second time when
13 the U.S. Attorney's Office showed up they told you you
14 were in trouble, right?

15 A. Yes.

16 Q. They told you you could be sitting with these guys
17 in Court, right?

18 A. Yes.

19 Q. But if you tell us that you are Natinuing and if you
20 tell us about Bogdan, everything is cool, no problem?

21 MR. McDONOUGH: Objection.

22 Q. You won't be prosecuted?

23 THE COURT: Sustained.

24 BY MR. GOLDBERG:

25 Q. Everything is fine, you won't be prosecuted,

Mr. Matei - Cross Cont'd

1 right?

2 A. Yes.

3 Q. Because that's exactly what happened, right?

4 A. Yes.

5 MR. GOLDBERG: Thank you, your Honor.

6 Nothing further.

7 THE COURT: Mr. O'Shea cross?

8 CROSS EXAMINATION CONTINUED

9 BY MR. O'SHEA:

10 Q. Good morning.

11 A. Good morning.

12 Q. Sir, if you can, can you tell us, the ladies and
13 gentlemen of the jury and the rest of us in the
14 courtroom, a little more about the job that you
15 currently have, that you talked about a little bit? What
16 is it?

17 A. It is about informing the guests in the hotel why do
18 they use personnel data, how do we keep it, under what
19 rules. This is one part.

20 The other part is where I make sure that if
21 someone asks what do we have about him, I can collect it
22 from every department what they have and why they used it
23 and where it is and how it is stored and everything like
24 this.

25 Q. How long have you had this nice job?

Mr. Matei - Cross Cont'd

1 A. The GDPR job for about a year, maybe less than a
2 year.

3 Q. And how long you have been married, two years?

4 A. Yes.

5 Q. And you have a three-year old daughter?

6 A. No, almost two years old.

7 Q. A two-year old daughter?

8 A. Yes.

9 Q. And do you use this job to support your family?

10 A. Yes.

11 Q. Does your wife work?

12 A. She is ending in May the prenatal program.

13 Q. Does she have a job then?

14 A. She had one. Now, it is paid by the government, and
15 in May, she get another one.

16 Q. You don't want to lose this job, right?

17 A. No.

18 Q. And if you got arrested and prosecuted by your
19 government, you would definitely lose your job?

20 A. If I cannot attend to it, yes.

21 Q. And if your employer where you work with these
22 computer skills found out that you got arrested and
23 prosecuted, they would fire you, right?

24 A. If I cannot attend to work, yes, but just knowing
25 about, I am not sure.

Mr. Matei - Cross Cont'd

1 Q. You don't want to lose this job.

2 A. No, I don't.

3 Q. Okay. When you were doing the illegal stuff up
4 until 2014 with your hack computer skills, did you
5 pay Romanian income taxes on the money you were
6 stealing?

7 A. No.

8 Q. Did you do anything whatsoever after you got
9 religion in 2014 to give back to the people you stole it
10 from?

11 A. No. Just little things in my computer.

12 Q. Why not if you are a new man?

13 A. I don't have any money to do that.

14 Q. Did you even try?

15 A. No.

16 Q. Now, the drugs that I think I heard you testify,
17 ecstasy, marijuana, and did I hear you right, horse
18 tranquilizers?

19 A. Yes.

20 Q. These tranquilizer drugs are the drugs they use to
21 put horses to sleep?

22 A. They tranquilize horses.

23 Q. Do you know what "tranquilize" means?

24 A. They don't feel anything.

25 Q. Okay. During this time that you were involved with

Mr. Matei - Cross Cont'd

1 whatever this group was, you were taking horse
2 tranquilizers?

3 A. No. I don't think so.

4 Q. When were you taking the horse tranquilizers?

5 A. Before meeting them.

6 Q. What did the horse tranquilizer do to your
7 brain?

8 A. You imagine things at times.

9 Q. And was it the marijuana, the ecstasy, or the horse
10 tranquilizer that did the permanent injury on you?

11 MR. McDONOUGH: Objection.

12 THE COURT: Sustained.

13 BY MR. O'SHEA:

14 Q. Did the horse tranquilizers do permanent injuries on
15 you?

16 MR. McDONOUGH: Objection.

17 THE COURT: Sustained.

18 BY MR. O'SHEA:

19 Q. Did I hear you testify that you still suffer from
20 side effects from the drugs?

21 A. I think so. I don't know it is exactly from
22 that.

23 Q. What drugs gave you the side effects do you
24 think?

25 MR. McDONOUGH: Objection.

Mr. Matei - Cross Cont'd

1 THE COURT: Sustained.

2 BY MR. O'SHEA:

3 Q. The stuff that you are talking about, the last time
4 you were involved with any of this illegal stuff was five
5 years ago?

6 A. Yes.

7 Q. Do you think you could remember if you tell
8 this jury exactly what happened five years ago or did
9 the Government have to show you things to help you
10 remember?

11 A. How I got out of the group?

12 Q. Just all the stuff you testified about.

13 A. I remember.

14 Q. You remember all the e-mail addresses permanently on
15 your brain, or did you have to have help?

16 A. No. I remember now except one, I think.

17 MR. O'SHEA: Can you bring up Exhibit
18 1204?

19 Q. Do you remember testifying about this under oath
20 here this morning, sir?

21 A. Yes.

22 Q. Just so that we are clear, before you sat down where
23 you are sitting now, somebody showed you this exhibit,
24 right?

25 A. Yes.

Mr. Matei - Cross Cont'd

1 Q. And they told you they were going to show it to you
2 in this courtroom, right?

3 A. Yes.

4 Q. How long did that conversation occur?

5 A. How long it took?

6 Q. Yeah. How long did that conversation where they
7 showed you this exhibit, how long was the meeting?

8 A. The whole meeting one hour, I think. I don't
9 know.

10 Q. I am going to show you, sir —

11 MR. O'SHEA: May I approach the witness?

12 THE COURT: Of course.

13 BY MR. O'SHEA:

14 Q. Exhibit 1415, I believe, do you remember talking
15 about this earlier?

16 A. Yes, yes.

17 Q. Do you have any idea where this specific antenna or
18 modem came from, any idea at all where this one came
19 from?

20 A. No.

21 MR. O'SHEA: Could you put up Exhibit 1419?

22 This was a picture of a house.

23 BY MR. O'SHEA:

24 Q. Do you remember testifying about that picture,
25 sir?

Mr. Matei - Cross Cont'd

1 A. I did earlier, yes.

2 Q. Yeah. Do you know who took this picture? Do you
3 have any idea?

4 A. No.

5 Q. Do you know even when it was taken, sir?

6 A. No.

7 Q. I think you agreed with Mr. Goldberg when he asked
8 you questions here that when you were put under oath
9 before you lied?

10 A. Yes.

11 Q. And your nickname is hack, h-a-c-k, hack?

12 A. I don't know exactly how they write it down; how
13 they say it I know.

14 Q. Do you know how the word "hack" is used in the
15 United States?

16 A. I guess I do, h-a-c-k.

17 Q. Do you know what it means in the United States?

18 A. Yes, hacking computers.

19 Q. And that was your nickname, right?

20 A. Yes.

21 Q. Okay. I think you indicated that you learned of the
22 arrests that happened in September of 2016, right?

23 A. Yes.

24 Q. How soon after they happened did you learn of
25 them?

Mr. Matei - Redirect

1 A. I don't remember. I know it was winter.

2 Q. Okay. Not a year later, just a couple of months or
3 couple of weeks later?

4 A. I cannot say for sure.

5 Q. Okay. Do you remember who told you?

6 A. Yes. Stranger came to the hotel I work and asked
7 for me and told me.

8 Q. A stranger?

9 A. Yes.

10 Q. Do you find that peculiar some stranger comes in and
11 says "hey" —

12 A. In that case, it was sent by somebody.

13 THE COURT: I'm sorry. It was what?

14 THE WITNESS: Sent by somebody.

15 BY MR. O'SHEA:

16 Q. Last question, sir: Are oaths important to
17 you?

18 MR. McDONOUGH: Objection.

19 THE COURT: Overruled.

20 A. Yes.

21 MR. O'SHEA: Nothing further.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. McDONOUGH:

25 Q. Was Bogdan Nicolescu your friend?

Mr. Matei - Redirect

1 A. I considered him my friend.

2 Q. Was Radu Miclaus your friend?

3 A. I also considered him my friend.

4 MR. McDONOUGH: Nothing further.

5 MR. GOLDBERG: Nothing.

6 MR. O'SHEA: Nothing further.

7 THE COURT: You may step down.

8 Folks, do you want to call a witness for 15
9 minutes, or would you prefer not to?

10 MR. BROWN: We can go ahead and call a
11 witness for 15.

12 THE COURT: You are all set, sir. We will
13 do about ten minutes of the next witness.

14 MR. McDONOUGH: The United States of America
15 would call Catalin Dima.

16 THE COURT: Please step up to the podium,
17 sir, and raise your right hand.

18 CATALIN DIMA
19 called as a witness by and on behalf of the Government,
20 being first duly sworn, was examined and testified
21 as follows:

22 THE COURT: Please take a seat right over
23 there, sir.

24 - - - -

25

Mr. Catalin Dima - Direct

1 DIRECT EXAMINATION

2 BY MR. McDONOUGH:

3 Q. All right. Good morning.

4 Could you please state your first name, and
5 spell it for the benefit of the court reporter?

6 A. It is Catalin, C-a-t-a-l-i-n.

7 Q. And what is your last name or family name, and spell
8 it for the benefit of the court reporter?

9 A. It is Dima, D-i-m-a.

10 Q. Did you commit computer crimes with anyone in this
11 courtroom?

12 A. Yes.

13 Q. Who?

14 A. Bogdan Nicolescu.

15 Q. Could you please identify Bogdan Nicolescu?

16 A. He is over there.

17 Q. Could you describe what he is wearing?

18 A. He is wearing a gray suit and blue shirt and
19 glasses.

20 Q. Is he wearing a tie?

21 A. No.

22 Q. Is he at the front table or back table?

23 A. Front table.

24 MR. McDONOUGH: May the record reflect the
25 witness identified the Defendant Bogdan Nicolescu?

Mr. Catalin Dima - Direct

1 THE COURT: May so reflect.

2 BY MR. McDONOUGH:

3 Q. How long have you known him?

4 A. 2011.

5 Q. And what were his nicknames?

6 A. Obe, Master Fraud, and MF.

7 Q. Where did you go to school?

8 A. I went to a public high school in Bucharest.

9 Q. What did you study?

10 A. I took computer science and technology courses.

11 Q. Did you go to the university?

12 A. Yes.

13 Q. What university did you go to?

14 A. I study economics for four years in Bucharest, but I
15 didn't get it.

16 Q. What did you do after you did not graduate from the
17 university?

18 A. I started working as a developer building
19 websites.

20 Q. How did you learn how to be a web developer?

21 A. I am into computers since the eighth grade. I am a
22 self-taught programmer, also from high school where I
23 studied computer programming.

24 Q. Okay. What kind of computer programs did you teach
25 yourself or did you learn in high school?

Mr. Catalin Dima - Direct

1 A. In high school. Okay. It was like Turbo Pascal NC
2 and afterwards.

3 Q. I'm sorry. The computer programs you learned
4 growing up, one was Pascal.

5 A. Yes.

6 Q. P-a-s-c-a-l?

7 A. Exactly.

8 Q. What were other computer programs that you used to
9 develop and design websites?

10 A. PHP, HTML —

11 Q. PHP?

12 A. Yes, PHP.

13 Q. And what's the last one?

14 A. HTML.

15 Q. HTML?

16 A. And JavaScript.

17 Q. And JavaScript?

18 A. JavaScript, yes.

19 Q. J-a-v-a-S-c-r-i-p-t?

20 A. Yes.

21 Q. And you learned those yourself or those were taught
22 to you?

23 A. I learned those by myself.

24 Q. When you were developing websites, for whom were you
25 working?

Mr. Catalin Dima - Direct

1 A. Small companies in Bucharest.

2 Q. How much money did you make?

3 A. Right now or at that time?

4 Q. At that time.

5 A. Right. 1,500 to 2,000 Euro a month.

6 Q. How did you meet Bogdan Nicolescu?

7 A. I met him in Brasov at his place.

8 Q. How long were you at his place — is it Rosnov?

9 A. Rosnov.

10 Q. And how did you get to his place in Rosnov?

11 A. I don't know how to answer the question exactly.

12 Q. Okay. Well, let me ask you this:

13 Did you know him in high school?

14 A. Pardon?

15 Q. Did you know Bogdan Nicolescu in high school?

16 A. No.

17 Q. Did you know him in college?

18 A. No.

19 Q. Were you introduced to him?

20 A. Yes.

21 Q. Who introduced you?

22 A. My brother and Victor.

23 Q. What's your brother's name?

24 A. Valentin Dima.

25 Q. Does your brother have a nickname?

Mr. Catalin Dima - Direct

1 A. Inside the group.

2 Q. Yes.

3 A. It was something like keseti.

4 Q. That was your brother's nickname?

5 A. Yes.

6 Q. And what was your nickname in the group

7 A. Linxstal.

8 Q. Linx?

9 A. Linxstal.

10 Q. That was your nickname?

11 A. Yes.

12 Q. How did you start committing computer crimes with
13 Bogdan Nicolescu?

14 A. After I went to his place, he taught me how to
15 encrypt my computer, and he showed me the whole scheme,
16 the virus, and everything.

17 Q. What was the whole scheme, the virus, everything?

18 A. Okay. It was composed of — from the virus, which
19 we used to infect victim's computers to inject fake eBay
20 pages with our ads. We also did some cars on eBay.

21 So yeah, we infected victims' computers, and
22 then, we tried to sell them fake cars, cars that didn't
23 exist.

24 Q. How did you use your programming skills as part of
25 this scheme?

Mr. Catalin Dima - Direct

1 A. I wrote some helper tools like on a spammer, which
2 we used to send e-mails.

3 Q. What is a spammer?

4 A. It is a software that can send many e-mails in a
5 very short period of time automatically.

6 Q. What would sending e-mails automatically in a short
7 period of time do?

8 A. Infect computers to send out the virus.

9 Q. Infect the computers with what virus?

10 A. The virus that Bogdan wrote.

11 Q. How do you know Bogdan wrote a virus?

12 A. Because he told me, and also, he show meed me.

13 Q. Where did he show you?

14 A. First in Rasnov.

15 Q. First in Rasnov?

16 A. Rasnov, yes.

17 Q. Where in Rasnov, whose house?

18 A. At his place, I think he rented it.

19 Q. Where else?

20 A. At his place in a village near Pitesti, but I don't
21 remember the name.

22 Q. Who lives in Pitesti?

23 A. He has a house there but not in Pitesti. It is near
24 Pitesti. It is a village.

25 Q. What's the name of it? Do you know?

Mr. Catalin Dima - Direct

1 A. I don't remember.

2 Q. How long would you visit Bogdan Nicolescu's house?

3 A. One week or ten days at the time.

4 Q. What would you do when you visited with him for one
5 day or ten days at a time?

6 A. Work on tools. He was working on the virus. I was
7 working on my — like the spammer, e-mail creator of its
8 own.

9 Q. Did you keep track of listings on eBay?

10 A. Yes.

11 Q. Okay. Did you list cars on eBay?

12 A. Yes.

13 MR. McDONOUGH: May we have Government's
14 Exhibit 1144, please?

15 BY MR. McDONOUGH:

16 Q. Showing you what has been marked for identification
17 purposes as Government's Exhibit 1144, have you seen this
18 before?

19 A. Yes.

20 Q. What is it?

21 A. This was user interface for one of our tool.

22 Q. This is a user interface for one of your tools?

23 A. Yeah, which we used to automatically list the cars
24 on it.

25 Q. So automatically lists cars?

Mr. Catalin Dima - Direct

1 MR. McDONOUGH: All right. Can we zoom in
2 on the upper left quadrant of this exhibit? All right.

3 BY MR. McDONOUGH:

4 Q. Who is Linx?

5 A. That's me.

6 Q. Who is MF?

7 A. Master Fraud Bogdan.

8 Q. Who is min?

9 A. Min is Minolta.

10 Q. Who is Raul?

11 A. I am not sure.

12 Q. Okay. All right.

13 A. I can guess.

14 Q. No. I don't want you to guess.

15 A. Okay.

16 Q. On this sheet, on Government's Exhibit, how many
17 cars did you list?

18 A. 32.

19 Q. How many did Master Fraud list?

20 MR. GOLDBERG: Objection.

21 THE COURT: Sustained.

22 BY MR. McDONOUGH:

23 Q. Do you know what this —

24 MR. GOLDBERG: Your Honor, I object to the
25 use of this exhibit with this witness. I should have

Mr. Catalin Dima - Direct

1 objected sooner.

2 THE COURT: I have sustained the last
3 objection.

4 BY MR. McDONOUGH:

5 Q. You kept track of the auto listings, the group
6 did?

7 A. Yes.

8 MR. O'SHEA: Objection.

9 THE COURT: Sustained as to the form.

10 BY MR. McDONOUGH:

11 Q. Where did you keep track of the auto listings?

12 A. We have a database.

13 Q. Where was the database kept?

14 A. On a VPS, virtual private server.

15 Q. What is a virtual private server?

16 A. It is a server that you can rent online.

17 Q. What was your role involving the virtual private
18 server?

19 A. I was doing maintenance work, transferring the files
20 between servers.

21 Q. Okay. How did you transfer files between servers?

22 A. Using a tool called Rsync.

23 Q. Rsync, R-s-y-n-c?

24 A. Yes.

25 Q. What did that tool allow you to do?

Mr. Catalin Dima - Direct

1 A. To take everything from one server and put it on
2 another server.

3 Q. Why would you have to move one virtual private
4 server to another virtual private server?

5 A. Because we needed redundancy, because the servers we
6 bought and using stolen credit cards.

7 Q. I am going to stop you. You said redundancy?

8 A. Yes.

9 Q. What do you mean by redundancy?

10 A. If one server goes down, we need more servers to be
11 online, so the whole thing is — will keep working.

12 Q. What was the second reason that you said you had to
13 move, the reason to have multiple virtual private
14 servers?

15 A. Because we used stolen credit cards to rent servers,
16 so yeah, they sometimes — the owner of the credit card
17 will figure out that his card is used for this purpose,
18 and the server will be closed.

19 Q. Okay.

20 THE COURT: Mr. McDonough?

21 MR. McDONOUGH: This is a good time to
22 break, your Honor.

23 THE COURT: Remember the admonition, folks.
24 Do not form any opinion. Do not talk about the case.
25 Please be downstairs at 1:30. We will call for you at

Mr. Catalin Dima - Direct

1 that time. Have a good lunch, everyone. Get outside and
2 enjoy that weather.

3 (Jury out.)

4 THE COURT: Sir, do not talk about the case
5 with anyone.

6 THE WITNESS: Okay.

7 MR. O'SHEA: Thank you, Judge.

8 (Luncheon recess taken.)

9 - - - - -

10
11
12
13
14 AFTERNOON SESSION

15 THE COURT: Whenever you are ready,
16 Mr. McDonough.

17 MR. McDONOUGH: Thank you your Honor.

18 BY MR. McDONOUGH:

19 Q. All right. Mr. Dima, when we left off from this
20 morning, we were talking about some eBay listings. How
21 did you list a vehicle on eBay?

22 A. Using the free access service, so we get a real car
23 also from eBay, save it, and later we will — we would
24 pose it on eBay.

25 Q. I didn't hear that last.

Mr. Catalin Dima - Direct

1 A. And later we would pose it on eBay ads.

2 Q. You would get the car from a what ad?

3 A. EBay ad.

4 Q. From an eBay ad?

5 A. Yeah.

6 Q. And showing you what has been marked for
7 identification as Government's Exhibit 1432, which is in
8 evidence.

9 MR. McDONOUGH: Ms. Chandler may we have
10 Government's Exhibit 1432?

11 BY MR. McDONOUGH:

12 Q. Do you recognize this?

13 A. Yes.

14 Q. What's that?

15 A. It is a car.

16 Q. What kind of car?

17 A. It is a 1970 Chevrolet Chevelle.

18 Q. Okay. When you posted a car on eBay, who was
19 responsible for interacting with the buyer?

20 A. Me.

21 Q. All right. If the buyer had a question, how did you
22 know about it?

23 A. He would send an e-mail to me.

24 Q. Okay. How would you know that the buyer had a
25 question?

Mr. Catalin Dima - Direct

1 A. I would check my e-mail often.

2 Q. Okay. In fact, it is approximately 1:45 p.m. in
3 Cleveland, Ohio. What time is it in Romania right
4 now?

5 A. It is minus seven hours, so it is like — no, we are
6 minus seven so it is like 9:00 p.m.

7 Q. Right now in Romania?

8 A. Yeah.

9 Q. All right. What if you were sleeping when that
10 e-mail came?

11 A. That's it, I don't know.

12 Q. Okay.

13 A. We — I would answer after I wake up.

14 Q. Okay. Did you have any communications with the
15 buyer other than e-mail?

16 A. Yes. We used to have a live chat on eBay, fake live
17 chat.

18 Q. Okay. What if you were unavailable for live chat,
19 who would do that?

20 A. Maybe somebody else would take the chat for us.

21 Q. How would — I'm sorry. Continue.

22 A. Yeah. Somebody else would take the chat for us.

23 Q. How would anybody else know that there was a live
24 chat from the buyer?

25 A. I remember that we used to have a tool that would

Mr. Catalin Dima - Direct

1 ring.

2 Q. The tool would do what?

3 A. Would ring, you know. It will hear a sound.

4 Q. Okay. The tool would read what?

5 A. Ring.

6 Q. The tool would ring?

7 A. Yeah.

8 Q. Who would the tool ring?

9 A. All of us.

10 Q. Okay. All right.

11 A. Or maybe only two. I think it was configurable, so
12 they can put their name, the tool.

13 Q. You could adjust the tool?

14 A. Yeah.

15 Q. To who it would notify?

16 A. Exactly.

17 Q. Who posted ads on eBay for cars besides you?

18 A. All of us.

19 Q. Okay. I am going to show you Government's Exhibit
20 1144, and if we could please zoom in to the upper left
21 corner to show the address bar, just that first little
22 corner there. Down a little bit. Do you see the address
23 of where that is from?

24 A. Yeah. It is localhost.

25 Q. What is S/my 4 auto/listings.PHP?

Mr. Catalin Dima - Direct

1 A. It is like a web tool.

2 Q. Who were you on this web tool.

3 A. Linx, the first one.

4 Q. And what is 32 count, what does that represent?

5 A. It means I have 32 cars that are live.

6 Q. What does "live" mean?

7 A. Active, still active.

8 Q. The ad is still active?

9 A. Yes.

10 Q. Who is MF?

11 A. It is Master Fraud.

12 Q. How many cars did he have live?

13 A. 38.

14 Q. And who is m i n?

15 A. Minolta.

16 Q. And how many cars did he have?

17 A. 947 cars.

18 Q. 900 —

19 A. -47.

20 Q. Did you list each ad one at a time?

21 A. No. We used automatic tool.

22 Q. An automatic tool?

23 A. Yes.

24 Q. What did the automatic tool do?

25 A. Automatically list tools on eBay.

Mr. Catalin Dima - Direct

1 Q. If we could zoom out.

2 Do you see the last line of Government's
3 Exhibit 1144?

4 A. Yes.

5 MR. McDONOUGH: Ms. Chandler, would you
6 please highlight that last line?

7 BY MR. McDONOUGH:

8 Q. What vehicle did you list on that last time?

9 A. Chevrolet Chevelle Super Sport.

10 Q. Did you use the same ad more than once?

11 A. Maybe sometimes.

12 Q. Okay. All right. Now, did you use e-mail
13 communication with the group?

14 A. Yes.

15 Q. How did you use e-mail communication?

16 A. We had addresses at GMX.com.

17 Q. I am going to show you Government's Exhibit 1854,
18 page 69?

19 MR. McDONOUGH: And if we could zoom in just
20 on the table itself, Ms. Chandler.

21 BY MR. McDONOUGH:

22 Q. Do you see the first column?

23 A. Yes.

24 Q. Date, second column is.

25 A. Time.

Mr. Catalin Dima - Direct

1 Q. And the third column is?

2 A. From.

3 Q. Who sent the e-mail?

4 A. Exactly.

5 Q. And fourth column?

6 A. It is to.

7 Q. Do you see some of those e-mail addresses in that
8 fourth column, that box?

9 A. Yes.

10 Q. Do you recognize any of them?

11 A. Yeah, some of them.

12 Q. Who do you recognize?

13 A. The second one, amightysa.

14 Q. Do you know who amightysa is?

15 A. Tiberiu.

16 Q. Tiberiu who? Do you know his last name or no?

17 A. No.

18 Q. Okay. What else do you recognize?

19 A. Keke.zete, the third one.

20 Q. Keke.zete.

21 A. Keke.zete, my brother.

22 Q. Your brother's name?

23 A. Valentin Dima.

24 Q. Okay. And who is the next one?

25 A. Me, Linxstal.

Mr. Catalin Dima - Direct

1 Q. That's you?

2 A. Yeah.

3 Q. All right. And the next one?

4 A. Minolta.

5 Q. Who is that?

6 A. Radu.

7 Q. Next one?

8 A. Natiuning.

9 Q. Who is Natiuning?

10 A. Marius Matei.

11 Q. Marius Matei. Okay. Next one?

12 A. W x y z. This was Victor.

13 Q. Victor who?

14 A. Victor Kasianchuk.

15 Q. And what's his nickname?

16 A. Vaca.

17 Q. And the last one?

18 A. I don't know about this one.

19 Q. Okay. So that was January 22nd, 2012. Who sent you
20 the e-mail?

21 A. Bogdan, Master Fraud.

22 Q. And what was the e-mail about?

23 A. About some credit cards.

24 Q. And what did you use the credit cards for?

25 A. Myself not much.

Mr. Catalin Dima - Direct

1 Q. When you say not much, what do you mean by
2 that?

3 A. He don't remember. It was like to purchase phone
4 numbers sometimes.

5 Q. Let me ask you this. You mentioned earlier about
6 virtual private servers going from one to another?

7 A. Yes.

8 Q. Did you need credit cards for that?

9 A. Yes, of course.

10 Q. Did you make purchases on the credit cards?

11 A. We the group but not me. We the group.

12 Q. The group?

13 A. Yeah.

14 Q. You didn't use a credit card?

15 A. I did.

16 Q. You did do what?

17 A. Like I said, to purchase some phone numbers and —

18 Q. You said to purchase phone numbers?

19 A. Yes, phone numbers, so it could use tools, for ads
20 on eBay.

21 Q. Oh, you needed a phone number?

22 A. Yes, a real phone number, so they can send an
23 investigation card.

24 Q. So that eBay can send a notification?

25 A. Yes.

Mr. Catalin Dima - Direct

1 Q. Okay. Did you use credit cards for those virtual
2 private servers?

3 A. Myself, no, I don't remember.

4 Q. Okay.

5 A. I don't remember what the other guys did.

6 Q. All right. Now, that was January 22nd, 2012. Did
7 you get other e-mails from Master Fraud?

8 A. In this list or generally?

9 Q. Yes, in this list.

10 A. Yes.

11 Q. When?

12 A. On November 2nd.

13 Q. When else?

14 A. November 5th, November 6th, everyday pretty much.

15 Q. Now, in that fourth column, there is a line
16 e libera Angela dot. What's that?

17 A. It means Angela was free. Angela was a mule.

18 Q. Did you have contact with Angela?

19 A. I don't remember.

20 Q. And if we could zoom out or scroll down, if
21 possible. All right.

22 November 7, 2012, did you get an e-mail from
23 kekezete?

24 A. Yes.

25 Q. That's your brother?

Mr. Catalin Dima - Direct

1 A. Yes.

2 Q. What is he e-mailing you about?

3 A. About updated credit card list.

4 Q. Who did your brother e-mail?

5 A. To Master Fraud, to me, Minolta, Munteanu.

6 Q. And if we can continue to scroll down, November 8th,
7 2012, what is print screen viewer?

8 A. This was a tool, so you can see the infected
9 computer's desktop screen in real-time, take
10 snapshots, and you could see basically the desktop
11 of the victims.

12 Q. Do you know who created that tool to take a picture
13 of the infected computer's desktop?

14 A. Yes, Bogdan.

15 Q. And if we can go to page 70, please? November 9th,
16 did you get an e-mail from Master Fraud?

17 A. Yes.

18 Q. What is SMS?

19 A. We used SMS to communicate with the mules.

20 Q. Okay. We can continue to scroll down. Okay. And
21 if — do you know what the December 10th, 2012, do you
22 know what vumper is?

23 A. Yes. It is a service where you can purchase virtual
24 phone numbers.

25 Q. What was that for?

Mr. Catalin Dima - Direct

1 A. Police ads on eBay.

2 Q. And if we can go to the next page, please, 71.

3 February 10th, 2013, did you get an e-mail from Master
4 Fraud?

5 A. Yes.

6 Q. What does the proxy mean?

7 A. One second. Means fuels. But I don't remember
8 about fuels.

9 Q. That's okay. February 11, 2013, did you get an
10 e-mail from Master Fraud?

11 A. Yes.

12 Q. What is that e-mail about?

13 A. It is about drones, he used to call them drones.
14 It's about some —

15 Q. Wait. That one is Natiuning, right, the drone?

16 A. Yes.

17 Q. What's the one below it. The CC log-in gmail?

18 A. CC means credit cards.

19 Q. Okay.

20 A. I don't know what you mean by logging in.

21 Q. Did others have gmail accounts in the group?

22 MR. GOLDBERG: Objection.

23 Q. If you know.

24 THE COURT: Sustained.

25

Mr. Catalin Dima - Direct

1 BY MR. McDONOUGH:

2 Q. You mentioned drone, what is a drone?

3 A. Some kind of relay proxy, so the infected computers
4 would first connect to the drone, then would connect to
5 the VPS computer.

6 Q. So between the computers and the virtual private
7 users —

8 A. Yes.

9 Q. The relay?

10 A. Yes.

11 Q. It is called a drone?

12 A. Yes.

13 Q. Was there more than one drone?

14 A. Yes.

15 Q. Maybe we can scroll down, please. February 13th,
16 2013, did you get an e-mail from Master Fraud regarding
17 SOCKS, S o x u r i?

18 A. SOCKS, okay.

19 Q. What is SOCKS?

20 A. SOCKS like the infected computer acting as a proxy,
21 so you could go to them to have an IP.

22 Q. Did you get an e-mail later, 2031, from Master
23 Fraud?

24 A. Yes.

25 Q. What is false alarm?

Mr. Catalin Dima - Direct

1 A. I don't remember.

2 Q. How about the one after?

3 A. This is a curse.

4 Q. Curse word. Who sent the curse word?

5 A. Bogdan.

6 Q. Do you recall what that was about?

7 A. Not really.

8 Q. If you could scroll down, please. February 13th,
9 top line, what is that e-mail about?

10 A. I don't remember, the eBay?

11 Q. Yes. Do you know what that eBay is?

12 MR. GOLDBERG: Objection.

13 A. I don't remember.

14 THE COURT: Overruled. The answer I don't
15 remember will stand.

16 BY MR. McDONOUGH:

17 Q. February 18, 2013, what is the e-mail from Master
18 Fraud new web user/pass?

19 A. This one was about the credentials to access the web
20 page where you could see everything in the interface like
21 infected computers and everything.

22 Q. And the web page and interface and the infected
23 computers, where would you see that? Where was that
24 located?

25 A. On the VPS.

Mr. Catalin Dima - Direct

1 Q. All right. Who sent you the credentials to get to
2 the VPS?

3 A. Bogdan and —

4 MR. O'SHEA: Objection.

5 A. And maybe the other guys —

6 MR. O'SHEA: Object.

7 THE COURT: Sustained.

8 BY MR. McDONOUGH:

9 Q. Do you know who sent you that?

10 A. Which one exactly?

11 Q. Well, new web user/pass, is there another e-mail
12 below that?

13 A. Yes.

14 Q. What's Parola S 3?

15 A. These are the credentials for the VPS, so I could
16 log in and set it up.

17 Q. And who sent you the credentials?

18 A. Bogdan, Master Fraud.

19 Q. And what is SSH port?

20 A. SSH port is a number, is a port. Is it required for
21 you to log into a server. If you don't know it, you
22 can't log into a server.

23 Q. Do you know the number 18615?

24 A. Yes, I remember.

25 Q. How do you know or remember that port number?

Mr. Catalin Dima - Direct

1 A. It is not unusual for a number to remember it. I
2 don't know the answer. I also used to set it up
3 sometimes.

4 Q. You would set that up?

5 A. Yes.

6 Q. Did you need to have — the port — is the port
7 number involved in moving a VPS from one server to
8 another server?

9 A. Yes.

10 MR. GOLDBERG: Objection.

11 THE COURT: Sustained.

12 BY MR. McDONOUGH:

13 Q. How did you use the port number to move from one VPS
14 to another VPS?

15 A. I would use a tool called rsync, r-s-y-n-c. Yes, I
16 could transfer the files from one server to another.

17 Q. How did you use port 18615?

18 A. I don't know the question exactly.

19 Q. What was port 18615?

20 A. It was an extra port we used to access the VPS
21 servers.

22 Q. And who is we?

23 A. The group.

24 Q. The whole group?

25 A. Yes.

Mr. Catalin Dima - Direct

1 Q. All right. February 18th, 2013, did you get e-mails
2 from Master Fraud?

3 A. Yes.

4 Q. What are all those e-mails about?

5 A. About this, credit cards.

6 Q. Okay. And were the e-mails, were there attachments
7 to the e-mails?

8 A. Sometimes, yes.

9 Q. Okay. The one on February 18th, did you have
10 attachments?

11 A. I don't remember.

12 Q. All right.

13 A. Oh, okay.

14 Q. In the column here?

15 A. It was an Excel sheet with credit cards.

16 Q. Okay. Did you have text files?

17 A. Yes.

18 Q. All right. February 18, 2013, what did you send
19 regarding SSH port and new passwords?

20 A. Yeah. Like I said, sometimes I would set the VPS
21 up, so I changed a port and the standard passwords.

22 Q. How would you notify everyone else in the group
23 about a new VPS and a new port and new password?

24 A. By e-mail.

25 Q. February 19th, 2013, did you get an e-mail from

Mr. Catalin Dima - Direct

1 Master Fraud?

2 A. Yes.

3 Q. What's he sending you?

4 A. A new password, SSH password.

5 Q. And what's the file he attached to this?

6 A. It's Pack 3, but I don't remember about this
7 one.

8 Q. Well, what is it, what is a text file?

9 A. What is a text file?

10 Q. Right. Is that a text file?

11 A. It is an encrypted text file. It is like a file, a
12 document which contains text.

13 Q. Okay. If we can go to page 73, please. March 3rd,
14 2013, what is Parola S 3? Did you send an e-mail?

15 A. Yes. It is the same thing to Marius Matei.

16 Q. And if you can scroll down. You sent some
17 additional e-mails March 4th, 2013?

18 A. Yes.

19 Q. What did you send?

20 A. VPN, random, VPN IP.

21 Q. What's that?

22 A. I don't remember about this.

23 Q. Last e-mail, March 13, 2013, what did you
24 send?

25 A. Job sites.

Mr. Catalin Dima - Direct

1 Q. What are you referring to at job sites?

2 A. The job sites we were using for recruiting mules.

3 Q. Did you have any contact with mules?

4 A. Yes.

5 Q. What kind of contact?

6 A. SMS.

7 Q. What's that again?

8 A. Text messages.

9 Q. What were you text messaging mules?

10 A. About transfers.

11 Q. What transfers?

12 A. From the victims, from eBay.

13 Q. What were you sending to mules?

14 A. That they should go to Western Union and pickup the
15 money. Oh, I think to the bank and pick up the money and
16 transfer the money to us by Western Union.

17 Q. How did you know the names of where the mules should
18 transfer the money?

19 A. We had like text files somewhere on Yahoo.

20 Q. Text file on Yahoo?

21 A. Yeah, we have notes.

22 Q. For that Yahoo notes, who had access to the text
23 file on Yahoo notes?

24 A. Everybody, all of us.

25 Q. Everybody in the group?

Mr. Catalin Dima - Direct

1 A. Yes.

2 Q. Same user name, same password?

3 A. Yes.

4 Q. What was on that Yahoo notes text list?

5 A. I don't remember right now from the memory.

6 Q. Did you use that information that was in the Yahoo
7 text?

8 A. Yes.

9 Q. And what information did you use?

10 A. I put some information there about transfers.

11 Q. Okay. How did you know if a mule was free or
12 available?

13 A. We used to talk about it.

14 Q. And how would you talk about it?

15 A. We would ask Jabber once if a mule is free or they
16 are using it.

17 Q. And how long did you continue to engage in e-mails
18 with Master Fraud and the rest of the group?

19 A. Are you asking me about my period inside the
20 group?

21 Q. Yes.

22 A. From 2011 to 2013.

23 Q. If we can go to page 77, Ms. Chandler, scroll down,
24 please.

25 I want to ask you a question about an e-mail

Mr. Catalin Dima - Direct

1 at the end of November, November 21st. If we could
2 scroll down a little bit. Do you see an e-mail from
3 Master Fraud November 21, 2013?

4 A. Yes.

5 Q. What was the subject of that e-mail?

6 A. Actually, I can't see — I can see two mails.

7 Q. What was the first e-mail?

8 A. Okay. To me. It is the only one. Spam.

9 Q. Spam, what is spam?

10 A. Generally speaking or just —

11 Q. Generally, what is spam.

12 A. Yeah, it is where you can send unwanted e-mails to
13 people, mass sending of unwanted e-mails to people.

14 Q. Did you do anything with spam?

15 A. Yes.

16 Q. What did you do?

17 A. We sent a lot of e-mail to the victims.

18 Q. For what purpose?

19 A. To infect them and inject the fake eBay pages with
20 the ads.

21 Q. Did there come a time when you left the group in
22 2013?

23 A. Pardon?

24 Q. Did there come a time when you left the group?

25 A. I don't understand the expression. Sorry.

Mr. Catalin Dima - Direct

1 Q. I'm sorry. When did you stop?

2 A. In 2013 at the end if I remember well.

3 Q. Why did you stop?

4 A. Because I wanted a normal life again. I got tired
5 of hiding from my friends.

6 Q. How much money were you making?

7 A. Wasn't like — how do you say — same income every
8 month but —

9 Q. From when you started to when you ended, how did it
10 change?

11 A. \$50,000, maybe \$60,000 maybe \$70,000.

12 Q. Over how many years?

13 A. Three years.

14 Q. How long did you work everyday?

15 A. It depends, from a few hours to maybe 16 hours.

16 Q. Where did you work?

17 A. Where?

18 Q. Yes.

19 A. At my place, at Bogdan's place.

20 Q. Okay. What did you do after you stopped?

21 A. I got a real job. I started working.

22 Q. Doing what?

23 A. Web development.

24 Q. Web development?

25 A. Yes.

Mr. Catalin Dima - Direct

1 Q. Who did you do web development for?

2 A. The first company or —

3 Q. Sure.

4 A. It is called Every Mattress, a UK based company.

5 Q. What did you do for this UK based company?

6 A. Web development.

7 Q. How long were you there?

8 A. One year.

9 Q. Where did you go after that?

10 A. Then I got hired by an American company called
11 CellTrust.

12 Q. CellTrust?

13 A. Yes.

14 Q. What is CellTrust.

15 A. It is an American company building software products
16 with like a mobile fleet management software and
17 encryption voiceover IP, encrypted voiceover IP.

18 Q. Okay. Where do you work there?

19 A. I have a small office for my place. I also went to
20 the United States for a few months.

21 Q. Okay. Do you have any family?

22 A. Yes.

23 Q. What family do you have?

24 A. I have a wife and a son.

25 Q. How long have you been married?

Mr. Catalin Dima - Direct

1 A. Since 2006.

2 Q. How old is your son?

3 A. Eleven years old.

4 Q. After you left the group to go to the UK company and
5 then to the American company, when was the next time you
6 had communication with Bogdan Nicolescu?

7 A. In 2016.

8 Q. How did he contact you?

9 A. He call me.

10 Q. What did he talk to you about?

11 A. He told me that he got involved in cryptocurrency,
12 and he was mining.

13 Q. What is mining for cryptocurrency?

14 A. It is — you use computer power to generate virtual
15 money we call currencies.

16 Q. Did he explain to you how he was able to use
17 computer power?

18 A. Yeah. He told me that he is using the infected
19 computers to mine cryptocurrencies.

20 Q. Okay.

21 A. The whole network.

22 Q. The whole network?

23 A. Yeah.

24 Q. Did you know how many infected computers were on the
25 whole network?

Mr. Catalin Dima - Direct

1 A. In 2016 or —

2 Q. At any time?

3 A. At any time, thousands.

4 Q. Did your group keep track of the infected
5 computers?

6 A. Yes.

7 Q. Where did your group keep track of the infected
8 computers?

9 A. We had a web interface on the VPS.

10 Q. Was there a list of folders and files on the
11 VPS?

12 A. Yes.

13 MR. McDONOUGH: Ms. Chandler, may we pull up
14 Government's Exhibit 1126, and if we could zoom in on the
15 text.

16 BY MR. McDONOUGH:

17 Q. Do you see Government's Exhibit 1126?

18 A. Yes.

19 Q. Do you recognize what this list is?

20 A. Those are some folders on the VPS.

21 Q. How would you access that list of folders on the
22 VPS?

23 A. You would log in as I said before using a name and a
24 password and special SSH port.

25 Q. Can we go to page 14, please? Do you see a folder

Mr. Catalin Dima - Direct

1 — folders on that page?

2 A. I see many folders.

3 Q. Any of them relate to you?

4 A. Yeah.

5 Q. Which ones?

6 A. Linux, this one.

7 Q. Can we please zoom in on Linux, the bottom half of
8 the page?

9 What is in the Linux folder?

10 A. Some safe cars.

11 Q. I'm sorry. What kind of cars?

12 A. Safe access.

13 Q. When you say safe?

14 A. Some safe ads like pictures for the cars and
15 descriptions.

16 Q. Okay. How would you get pictures of all these
17 cars?

18 A. From the eBay with the automatic tool.

19 Q. So these are cars you got using a tool?

20 A. Yes.

21 Q. Are these ones you used?

22 A. Yes.

23 Q. And if we could zoom out, please.

24 Government's Exhibit 1126, those files and
25 folders were located where?

Mr. Catalin Dima - Direct

1 A. On the VPS server.

2 Q. Okay. All right. What did Bogdan Nicolescu ask you
3 — withdraw.

4 What did Bogdan Nicolescu ask you regarding
5 cryptomining or cryptocurrency in 2016?

6 MR. GOLDBERG: Objection.

7 THE COURT: Sustained.

8 BY MR. McDONOUGH:

9 Q. You mentioned earlier you had a conversation with
10 Bogdan Nicolescu?

11 A. Yes.

12 Q. Did he ask you anything?

13 A. He asked me that if we could build a crypto
14 exchange.

15 Q. For the other people to be able to sell or buy
16 crypto currencies because he is getting good at crypto
17 currencies?

18 MR. GOLDBERG: Objection.

19 THE COURT: Overruled.

20 BY MR. McDONOUGH:

21 Q. What was your response to Bogdan's request?

22 A. I didn't want to. I didn't want to be involved with
23 him any more.

24 Q. Why?

25 A. Because I had — I had been involved with normal

Mr. Catalin Dima - Direct

1 job, which I enjoyed, so I didn't want to go back to
2 criminal activities at all or.

3 Q. Had you ever had any interaction with computers
4 and criminal activities prior to meeting Bogdan
5 Nicolescu?

6 A. I was under investigation in like 19 years ago.

7 Q. How old are you now?

8 A. 37.

9 Q. So 19 years ago you were how old?

10 A. Like maximum, like 20 years I was.

11 Q. And what school were you in at that time?

12 A. High school, or I just started university.

13 Q. Okay. What did — what was the investigation when
14 you were in high school or at the university involving
15 computers 19 years ago?

16 A. The details about it?

17 Q. Yeah.

18 A. At about generating credit cards we were using to
19 buy stuff from the internet.

20 Q. Where did you get the credit card numbers?

21 A. I don't remember, maybe from the internet. We used
22 to chat on the IRC, a lot of channels there.

23 Q. And what would you buy with your stolen credit
24 cards?

25 A. Small things like clothing or small electronics.

Mr. Catalin Dima - Direct

1 Q. All right. Where would the small clothing or
2 electronics get shipped?

3 A. To Romania.

4 Q. I'm sorry. To where?

5 A. To Romania.

6 Q. To Romania. To what address?

7 A. To me.

8 Q. To your house?

9 A. Yes.

10 Q. Did the police show up one day?

11 A. Yes.

12 Q. What did they do?

13 A. They seized my computer.

14 Q. Were you ever arrested for that?

15 A. No.

16 Q. Were you ever charged with that?

17 A. No. They dismissed the case and gave me back the
18 computer.

19 Q. Did you ever have to go to court for that?

20 A. No.

21 Q. When did they give you the computer back?

22 A. A few years ago maybe, five six years ago.

23 Q. What did you do with the computer that you used to
24 commit computer crimes in this case?

25 A. I wiped the hard drive and sold it.

Mr. Catalin Dima - Direct

1 Q. When you say wiped the hard drive, what do you mean
2 by that?

3 A. It is like erasing traces, fill it up with random
4 stuff.

5 Q. You erased it?

6 A. Yes. I erased it.

7 Q. Did your hard drive have a password?

8 A. At that time, yes. It was encrypted.

9 Q. Why did you encrypt your hard drive?

10 A. To keep my criminal information private.

11 Q. How long was your password?

12 MR. GOLDBERG: Objection.

13 A. Long.

14 THE COURT: Sustained.

15 BY MR. McDONOUGH:

16 Q. In February 2019, did you receive a summons to
17 appear before DIICOT, the Romanian National Police?

18 A. Yes.

19 Q. Did you appear at DIICOT?

20 A. Yes.

21 Q. Were you questioned by prosecutors?

22 A. Yes.

23 Q. The FBI?

24 A. Yes.

25 Q. Were you placed under oath?

Mr. Catalin Dima - Direct

1 A. Yes.

2 Q. Were you asked questions?

3 A. Yes.

4 Q. What were you asked?

5 A. About my connections with Bogdan and the Bayrob
6 Group.

7 Q. Did you tell the truth?

8 A. No.

9 Q. Why did you lie?

10 A. Because I was afraid of being prosecuted.

11 Q. Prosecuted where?

12 A. In Romania or maybe in the United States.

13 Q. Did you get an attorney?

14 A. Yes.

15 Q. Did you meet with the FBI?

16 A. Yes.

17 Q. Did you meet with the FBI and U.S. Attorneys and
18 myself?

19 A. Yes.

20 Q. Where?

21 A. At a hotel in Bucharest.

22 Q. Did you contact anyone after you got that summons to
23 appear?

24 A. Anyone?

25 Q. Yes, in the group?

Mr. Catalin Dima - Direct

1 A. In the group?

2 Q. Yeah.

3 A. No. Only with my brother I talked about.

4 Q. Did the Government enter into a proffer with you?

5 A. Yes.

6 Q. The Government, the FBI asked you questions?

7 A. Yes.

8 Q. Did the Government enter into a non prosecution
9 letter with you?

10 A. Yes.

11 Q. The Government flew you over for this case to
12 testify?

13 A. Yes.

14 Q. Put you in a hotel, paid your per diem, meals,
15 correct?

16 A. Yes.

17 Q. Did the group ever get together?

18 A. Sometimes, yes.

19 Q. Do you know if Bogdan Nicolescu's father owns
20 anything?

21 MR. GOLDBERG: Objection.

22 THE COURT: Sustained.

23 BY MR. McDONOUGH:

24 Q. Do they celebrate Thanksgiving in Romania?

25 MR. GOLDBERG: Objection.

Mr. Catalin Dima - Cross

1 THE COURT: Sustained.

2 BY MR. McDONOUGH:

3 Q. Were you ever at a gathering?

4 A. Yes.

5 Q. Where?

6 A. At that village close to Pitesti.

7 Q. For what purpose?

8 A. Like a Thanksgiving meal, something like that.

9 Q. And who hosted?

10 A. Bogdan.

11 Q. What was provided?

12 A. Rooms and food.

13 Q. Who was there?

14 A. At that meeting?

15 Q. Yes.

16 A. Me, my brother, Bogdan, Victor, Marius, Radu.

17 MR. McDONOUGH: No further questions.

18 THE COURT: Cross, Mr. Goldberg?

19 MR. GOLDBERG: Thank you.

20 CROSS EXAMINATION

21 BY MR. GOLDBERG:

22 Q. I am Mike Goldberg. I have a couple questions.

23 MR. GOLDBERG: May I approach?

24 THE COURT: Of course.

25

Mr. Catalin Dima - Cross

1 BY MR. GOLDBERG:

2 Q. Let me show you a list of e-mail addresses. Let me
3 ask you real quick, do you know c-a-p-c-o-z-a-u-r @
4 GMX.com?

5 A. No.

6 Q. Do you know r-e-z-i-c-e-x-s @ GMX.com?

7 A. No.

8 Q. Do you know s-c-a-m-a @ GMX.com?

9 A. No.

10 Q. Do you know w-t-w-x @ GMX.com?

11 A. No.

12 Q. Do you know q-w-t-a-x-y @ GMX. com?

13 A. No.

14 Q. Therefore, you don't know if any of those
15 individuals have log-in credentials for the Master Fraud
16 account, correct?

17 A. Correct.

18 Q. Now, it sounds to me like you were in charge of a
19 lot of things here.

20 Correct me if I am wrong, you posted ads.

21 You said you posted about 35 of them, correct?

22 A. Yes.

23 Q. And you said that there are 35 ads that you posted
24 up at one time?

25 A. Yes.

Mr. Catalin Dima - Cross

1 Q. Okay. And then, you said — you showed — the list
2 was shown to you where there was over a thousand ads all
3 posted at the same time, right?

4 A. Right.

5 Q. And you were responsible for talking to customers
6 that were responding to your ads?

7 A. Yes.

8 Q. And you managed — you had root access credentials
9 for the servers, correct?

10 A. Correct.

11 Q. Which means — root access means you could do
12 anything on the servers that you needed to do?

13 A. Yes, correct.

14 Q. You could move the servers between machines?

15 A. Yes.

16 Q. You could change any of the parameters of any of the
17 — anything that the servers were doing?

18 A. Not really. I think only the parameters that I knew
19 of.

20 Q. Okay. The ones you knew of you could manipulate?

21 A. Yes, of course.

22 Q. And isn't it a fact that you wrote some of the
23 automated tools that were used to post the ads for the
24 whole Bayrob Group?

25 A. Yes, that's correct.

Mr. Catalin Dima - Cross

1 Q. Okay. You have experience in Linux code?

2 A. Not really Linux but Linx administration.

3 Q. Okay. Which is all the stuff we are seeing on the
4 server, right?

5 A. Yes.

6 Q. And what about C computer language?

7 A. I don't know C computer language.

8 Q. What about JavaScript?

9 A. Yes. I know JavaScript.

10 Q. Which was very important for the work you were doing
11 in the Bayrob Group, right?

12 A. Not really but —

13 Q. No. Okay. What about gmail PHP?

14 A. PHP was important.

15 Q. PHP?

16 A. Yes, PHP.

17 Q. Python?

18 A. Python, yes.

19 Q. These were all things you were proficient in at the
20 time, correct?

21 A. Yes.

22 Q. Now, you mentioned that with regard to the Yahoo
23 notes everyone shared credentials?

24 A. That's like — that's what I remember, yes.

25 Q. Which means everyone had a name and had a user ID

Mr. Catalin Dima - Cross

1 and a password. Everyone had a user ID and a password
2 for the same account, correct.

3 A. Correct.

4 Q. So if I am on the outside looking in, looks like
5 that's one person, but to the group, it is many people
6 using the same account, correct?

7 A. Correct.

8 Q. And — and that's one of the ways that the
9 Bayrob Group communicated certain information to each
10 other?

11 A. Yes.

12 Q. You talked about being summoned to the police
13 station in February of 2019 a couple minutes ago?

14 A. Yes.

15 Q. Okay. Up to that point, you had not been talked to
16 by law enforcement regarding Bayrob?

17 A. No.

18 Q. Okay. So you went in to the police station — to
19 the police station, to DICOTT. Did you bring a lawyer
20 with you?

21 A. No.

22 Q. And you indicated that you no longer had the laptop
23 at least the hard drive, that you used, correct?

24 A. That came from —

25 Q. No. When you went to the police station, February

Mr. Catalin Dima - Cross

1 19, 2019.

2 A. They didn't ask about any of that.

3 Q. Right. They didn't ask because you denied knowing
4 anything about anything.

5 A. Of course.

6 Q. And eventually, you did talk to the police and
7 told them everything you said here today in Court,
8 right?

9 A. Yes. Not the Romanian police but to the FBI and the
10 American authorities.

11 Q. It is okay to lie to the Romanian police but better
12 not to lie to the FBI?

13 MR. McDONOUGH: Objection.

14 THE COURT: Sustained.

15 BY MR. GOLDBERG:

16 Q. Is that like okay in Romania, to lie to the Romanian
17 police?

18 A. It is not okay to lie, generally speaking.

19 Q. All right. So eventually, you talked to the FBI and
20 Romanian police, and this time you were really going to
21 tell the truth, right?

22 A. Yes.

23 Q. So did you give the Romanian police and the FBI the
24 second time you talked to them anything showing that you
25 were actually Linxstal on these e-mail addresses?

Mr. Catalin Dima - Cross

1 MR. McDONOUGH: Objection. Clarify.

2 BY MR. GOLDBERG:

3 Q. Did you give them a password to the account?

4 A. No.

5 Q. Did you give them any copies of e-mails, copies of
6 spreadsheets, anything from the Bayrob Group?

7 A. No.

8 Q. You knew when you went back the second time exactly
9 what they wanted to know, right?

10 A. Yes.

11 Q. And you knew from your first conversation with
12 them that they were interested in Bogdan Nicolescu,
13 correct?

14 A. Correct.

15 Q. And they are interested in tying the name Bogdan
16 Nicolescu to Master Fraud?

17 MR. McDONOUGH: Objection.

18 THE COURT: Sustained.

19 BY MR. GOLDBERG:

20 Q. Did you understand what they were interested
21 in?

22 A. Yes.

23 Q. What were they interested in?

24 A. Convicting Bogdan.

25 Q. Right.

Mr. Catalin Dima - Cross

1 A. Finding evidence and witnesses.

2 Q. And your understanding was, if you gave them the
3 information they were asking for, they wouldn't convict
4 you?

5 MR. McDONOUGH: Objection.

6 THE COURT: Overruled.

7 Q. Right?

8 A. Right. The truth. No —

9 Q. Well, let me ask the next question:

10 You get to stay home with your wife, your
11 child, your nice job with the United States company, you
12 don't get prosecuted at all as long as you tell them
13 about Bogdan, right?

14 MR. McDONOUGH: Objection.

15 A. As long as I tell them the truth.

16 THE COURT: Overruled.

17 BY MR. GOLDBERG:

18 Q. As long as you swear to tell the truth,
19 right?

20 A. Tell the real truth.

21 Q. Because you know you swore to tell the truth
22 when you talked to the Romanian police on February
23 19th?

24 A. Yes. But I —

25 Q. Just answer yes. We don't need to answer. You can

Mr. Catalin Dima - Cross

1 explain.

2 MR. McDONOUGH: Objection.

3 THE COURT: Overruled. Answer yes or no
4 questions, and the Government can ask further questions
5 on redirect.

6 A. Okay. So it is yes.

7 Q. You can't show me one thing that establishes your
8 identity as Linxstal on those e-mails, can you?

9 MR. McDONOUGH: Objection.

10 Q. You can't show me one piece of paper, any proof?

11 THE COURT: Overruled.

12 A. No.

13 Q. And we are supposed to take your word and this jury
14 for what your role was in this conspiracy?

15 MR. McDONOUGH: Objection.

16 THE COURT: Sustained.

17 BY MR. GOLDBERG:

18 Q. I am going to hand you what I previously marked as
19 Defendant's Exhibit U. Take a look at that, and tell me
20 what it is.

21 A. This is my witness, how to say this, my statement.

22 Q. This is a copy of a statement you gave to the
23 Romanian police on the 19th of February?

24 A. Yes.

25 Q. 2019?

Mr. Catalin Dima - Cross

1 A. Yes.

2 Q. Is your signature on it?

3 A. Yes.

4 Q. Did you look at all the pages. Your signature is
5 everywhere?

6 A. Yes.

7 Q. Is that your signature under the oath to tell the
8 truth so help you God?

9 A. Yes.

10 Q. And do you think there is anything missing from the
11 statement that should be on there or anything taken out
12 that was there before?

13 A. I think this is my first statement.

14 Q. Okay. And you were specifically asked about Bogdan
15 Nicolescu, correct?

16 A. Correct.

17 Q. And you said you didn't know anything about him and
18 any kind of crime, correct?

19 A. Correct.

20 Q. And you didn't know any e-mails associated with
21 him?

22 A. Correct.

23 Q. And you said you didn't know who Linxstal was,
24 correct?

25 A. Correct.

Mr. Catalin Dima - Cross

1 Q. And you would agree that your testimony here today
2 is exactly the opposite, right?

3 A. It is not the opposite; the truth like I said.

4 Q. Well, okay. It is the opposite. The jury decides
5 what —

6 A. Yeah.

7 Q. You are saying the opposite thing today than you
8 told the police three days before then, right?

9 A. Yes, yes.

10 Q. You said you were previously involved in a fraud 19
11 years ago or something to that effect?

12 A. Yes.

13 Q. And you actually said you did that.

14 You said that you used stolen credit cards
15 to buy stuff?

16 A. Generated credit cards, yes.

17 Q. Generated credit cards?

18 A. Yes.

19 Q. Like you made a credit card?

20 A. Not me. If I remember well, it was a tool so you
21 can use to generate credit cards.

22 Q. Okay. So you generated credit cards, but you knew
23 that was wrong?

24 A. Yes.

25 Q. Did you talk to the police in that case?

Mr. Catalin Dima - Cross

1 A. Yes.

2 Q. Did you confess, or did you lie then, too?

3 A. I didn't lie.

4 MR. McDONOUGH: Objection.

5 Q. I'm sorry.

6 THE COURT: Go ahead, sir.

7 Q. Did you lie or —

8 A. No.

9 Q. You told the truth?

10 A. Yes.

11 Q. And they just dismissed the case?

12 A. Yes.

13 Q. All right. And that was 19, 18 years ago?

14 A. Something like that, yes.

15 Q. And you are saying they sent those computers back
16 five or six years ago?

17 A. Yes.

18 Q. So 10 or 11 years later you get your laptop
19 back?

20 A. My desktop computer, yes.

21 Q. Okay. So the laptop that you used for this fraud
22 that you are talking about here today, you said you
23 completely wiped the hard drive?

24 A. Yes.

25 Q. And then you sold it?

Mr. Catalin Dima - Cross

1 A. Yes.

2 Q. All right. How did you sell it?

3 A. On the local ad website.

4 Q. Okay. What other evidence did you destroy besides
5 your computer?

6 A. Only my computer.

7 Q. I got a question:

8 When did you find out when

9 Bogdan Nicolescu, Tiberiu Danet, and Radu Miclaus
10 were in jail?

11 A. So in 2016.

12 Q. Okay. And after — but you had stopped using the
13 GMX e-mail at that point, right?

14 A. Yes. I haven't been using GMX account for like four
15 years, since 2013 when I stopped.

16 Q. So at that point, it had been sometime?

17 A. Yes.

18 Q. Okay. And same thing goes for the — for
19 the servers. You hadn't had any access to the
20 servers?

21 A. No.

22 MR. GOLDBERG: Can I have one moment, your
23 Honor?

24 THE COURT: You may.

25

Mr. Catalin Dima - Cross

1 BY MR. GOLDBERG:

2 Q. So you said that — your brother testified here
3 earlier today, Valentin?

4 A. Okay.

5 Q. And you grew up together, and you are in contact —
6 you always remained in contact with your brother,
7 correct?

8 A. Yes, of course.

9 Q. You stayed together this past weekend?

10 A. Yes.

11 Q. Okay. And I would imagine you discussed with him
12 what's going to happen here in Court today?

13 A. Yes. We tried to imagine.

14 Q. Yeah. You discussed what he told the Court on
15 Friday and what he —

16 A. No, of course.

17 Q. You didn't talk about that at all?

18 A. No.

19 Q. But you talked about what would happen here in
20 Court? You talked about —

21 A. On Friday?

22 Q. Just over the weekend.

23 A. Oh, over the weekend, no. He describe a little bit
24 like how is it, how this place —

25 Q. Did he ask you — did he tell you about the

Mr. Catalin Dima - Cross

1 questions that were going to be asked?

2 A. No, of course.

3 Q. After you went to the police station on the 19th and
4 gave what you said was your false statement —

5 A. Okay.

6 Q. — but before you went for the second statement, you
7 talked to your brother?

8 A. Yes.

9 Q. Okay. And you talked about what you were going to
10 tell the FBI and the police the second time you went in,
11 right?

12 A. We are talking about during the whole suit, that's
13 it.

14 Q. And Mr. Matei, too, correct?

15 A. Correct.

16 Q. You guys all communicated?

17 A. Yes.

18 Q. And the first time you went in, you didn't get
19 anything in return for going in?

20 A. Correct.

21 Q. But the second time, after you gave a statement
22 giving the Government what they were looking for about
23 Mr. Nicolescu, you got something very valuable in return,
24 correct?

25 A. Correct.

Mr. Catalin Dima - Cross Cont'd

1 Q. And that was a complete dismissal just like in 2003,
2 correct?

3 MR. McDONOUGH: Objection.

4 THE COURT: Sustained.

5 BY MR. GOLDBERG:

6 Q. It was a complete pass on prosecuting you for all of
7 your crimes?

8 A. Yes.

9 MR. GOLDBERG: Thank you, your Honor. I
10 have nothing further.

11 THE COURT: Cross.

12 Mr. O'Shea?

13 CROSS EXAMINATION CONTINUED

14 BY MR. O'SHEA:

15 Q. Good afternoon, sir.

16 A. Hello.

17 Q. Can you hear me?

18 A. Yes.

19 Q. Okay. Did I hear you testify that you had taken
20 computer classes in the past?

21 A. Yes.

22 Q. When did you take those computer classes?

23 A. In high school.

24 Q. Did you take any classes at the university —

25 A. No.

Mr. Catalin Dima - Cross Cont'd

1 Q. — in computers.

2 A. No.

3 Q. All you know about your computer fraud activities
4 you know from high school and from self-taught?

5 A. Computer activity or computers?

6 Q. Computer fraud activities, self-taught?

7 A. I don't understand the questions.

8 Q. Did they teach computer fraud in the high
9 school?

10 A. No.

11 Q. No?

12 A. No.

13 Q. You didn't go to any classes on it, right?

14 A. No.

15 Q. You taught yourself, right?

16 MR. McDONOUGH: Objection.

17 THE COURT: Overruled.

18 A. I taught myself computer programming like I
19 said.

20 Q. What about the fraud part? You taught yourself
21 that?

22 A. No, of course —

23 Q. Did you go to a class on that?

24 A. No.

25 Q. How did you find out about the arrest of Bogdan

Mr. Catalin Dima - Cross Cont'd

1 Nicolescu?

2 A. My brother told me.

3 Q. Did he call you?

4 A. Yes, he called me and told me.

5 Q. Call you on your cellphone?

6 A. Yes.

7 Q. Do you remember when he called you? Was there snow
8 on the ground? Was it before Christmas, before
9 Thanksgiving, do you remember?

10 A. I remember it was like autumn, I think. I don't
11 remember the exact time. Maybe November 2016.

12 Q. Do you remember being asked questions about all
13 those eBay cars for sale by the prosecutor a little while
14 ago?

15 Do you remember being asked that before
16 lunch?

17 A. I don't understand the question.

18 Q. Do you remember answering questions under oath about
19 eBay cars and —

20 A. Yes.

21 Q. — and listings and stuff?

22 A. Yes.

23 Q. As you sit here this afternoon in a U.S. federal
24 courthouse in Cleveland, Ohio, isn't it true that you
25 can't tell these ladies and gentlemen of the jury about a

Mr. Catalin Dima - Cross Cont'd

1 single transaction that you remember on eBay fraud, not
2 one?

3 A. The exact details, no.

4 Q. In order for you to have any ability to
5 testify about anything, you have to look at documents,
6 right?

7 A. Right.

8 Q. And those documents were given to you by the
9 Government, right?

10 A. Right.

11 Q. I think I heard you testify on direct examination
12 under oath that there was some sort of program that
13 Bogdan developed that automatically listed cars for eBay
14 sales, right?

15 A. No, that's me.

16 Q. That was you?

17 A. He wrote the virus.

18 Q. And this program would automatically take the
19 pictures and put them up without anybody doing anything
20 just after you wrote the program?

21 A. No, no. You had to control it. It was not fully
22 automatic.

23 Q. Okay. Well, how automatic was it?

24 A. You needed to give commands to it so the program
25 could list the cars online.

Mr. Catalin Dima - Cross Cont'd

1 Q. Did you have to do each car manually, or did it do
2 it automatically after you programmed it?

3 A. You have to choose a car or many cars, then the tool
4 would list the cars online.

5 Q. And that's the part of the fraudulent stuff that you
6 did?

7 A. Yes.

8 Q. Can you pull up Exhibit 1854, please? Do you see
9 Exhibit 1854, sir?

10 A. Yes.

11 Q. Do you remember testifying about certain portions of
12 this exhibit?

13 A. Yes, I do.

14 Q. Okay. Do you see how I can control the arrow now?
15 Do you see the bottom here?

16 A. Yes.

17 Q. How many pages long is it?

18 A. 114 pages.

19 Q. And do you remember being directed to certain
20 portions of those pages?

21 A. Yes.

22 Q. As you sit here without looking, did you —

23 MR. O'SHEA: Could you take it down?

24 Q. (Continuing) Without looking at that exhibit that
25 they supplied to you, as you sit here today in a

Mr. Catalin Dima - Cross Cont'd

1 federal courthouse in Cleveland, Ohio, you couldn't
2 remember any of those specific dates and e-mails. Isn't
3 that right?

4 A. Yes.

5 Q. Do you remember testifying on direct examination
6 when asked about some of these e-mails is that you used
7 the term "maybe, I don't remember." Do you remember
8 saying all that?

9 MR. McDONOUGH: Objection.

10 THE COURT: Sustained.

11 BY MR. O'SHEA:

12 Q. Do you remember using the term "maybe" when the
13 prosecutor asked you about certain e-mails? Do you
14 remember using that term out of your mouth, the word
15 "maybe"?

16 A. Yes.

17 Q. Do you remember saying the term "I don't remember"
18 when being asked about certain e-mails?

19 A. Yes.

20 Q. Even after they were shown to you on that chart,
21 right?

22 A. Yes.

23 Q. And you will agree with all of us that you met
24 with the prosecutors before you testified here,
25 right?

Mr. Catalin Dima - Cross Cont'd

1 A. Yes.

2 Q. So that you could go over these exhibits and be
3 prepared for today, right?

4 A. Yes.

5 Q. Now, have you ever — strike that.

6 I think you already indicated that you've
7 written computer code before, right?

8 A. Yes.

9 Q. And if you don't write computer code correctly, the
10 program won't work, right?

11 A. Right.

12 Q. Now, do you remember just telling me that you used
13 the term "maybe, I am not sure," and "I don't remember."

14 Do you remember that just a few seconds
15 ago?

16 A. Yes.

17 Q. Would that work in a computer code if you forgot
18 certain letters and commands?

19 A. No.

20 Q. Now, the \$70,000 that you made from people
21 through your fraudulent activities, sir, tell the
22 ladies and gentlemen of the jury when you gave that money
23 back.

24 A. Gave or —

25 Q. Gave it back to the people you stole it from?

Mr. Catalin Dima - Cross Cont'd

1 A. I don't have that kind of money at the moment.

2 Q. So you never gave it back, right?

3 A. Right.

4 Q. Tell the ladies and gentlemen what activities
5 you have engaged in to give back a single penny
6 of that money, a single cent of that that money to
7 anybody?

8 MR. McDONOUGH: Object.

9 THE COURT: Overruled.

10 A. None.

11 Q. Tell the ladies and gentlemen of the jury when you
12 notified the Romanian authorities of the money you took
13 so you could pay income taxes on it.

14 A. I didn't.

15 Q. This current job that you have, where is it, what
16 part of the world?

17 A. In Bucharest at the moment.

18 Q. Is it an American company?

19 A. Now, I am working for a UK Romanian based company.
20 It is a mixed company.

21 Q. When you were applying for that job, did you tell
22 those people that you were applying with about all your
23 fraudulent activities, sir?

24 A. No.

25 Q. Why not?

Mr. Catalin Dima - Cross Cont'd

1 A. It is obvious; couldn't tell them.

2 Q. They wouldn't hire you, right?

3 A. Right.

4 Q. Why wouldn't they hire you about this fraudulent
5 activity that you are no longer part of?

6 MR. McDONOUGH: Objection.

7 THE COURT: Sustained.

8 BY MR. O'SHEA:

9 Q. Would it be they couldn't trust you?

10 MR. McDONOUGH: Objection.

11 THE COURT: Sustained.

12 BY MR. O'SHEA:

13 Q. Now, you have an 11 year-old son and a wife. Am I
14 right?

15 A. Right.

16 Q. And you have this job, and you use this job to
17 support them. Am I right?

18 A. Right.

19 Q. And you don't want to lose this job, right?

20 A. The current job?

21 Q. Yes, sir.

22 A. Yes, of course.

23 Q. What job did you have in February of 2019, sir, the
24 same current job you have now?

25 A. September —

Mr. Catalin Dima - Cross Cont'd

1 Q. February, just a couple months ago when you
2 talked to the authorities, what job did you have, same
3 one?

4 A. Yes, the current one.

5 Q. Were you saying to yourself when they called you
6 "boy, I don't want to lose my job"?

7 A. Of course. I value my job by all means.

8 Q. Now, after you were interviewed by the Romanian
9 authorities and FBI at one point, did you go into your
10 employer and tell him what you had done?

11 A. I didn't tell him.

12 Q. To this very day, your employer has no idea,
13 right?

14 A. Right.

15 MR. O'SHEA: Can we bring up Exhibit 1126?

16 BY MR. O'SHEA:

17 Q. Do you remember being asked questions about this
18 document, sir, on direct examination, Exhibit 1126?

19 A. Yes.

20 Q. Does it look like it is about 28 pages long?

21 A. Yes.

22 Q. You were asked about page 14. Am I right?

23 A. Yes.

24 Q. Prior to testifying here in this federal courtroom
25 in Cleveland, Ohio, were you told and shown this document

Mr. Catalin Dima - Cross Cont'd

1 before you sat down sir?

2 A. Yes.

3 Q. During all of your years when you were involved with
4 the computer fraud, did you ever work with anyone to
5 steal user names and passwords?

6 A. Who use mine?

7 Q. When you were doing any computer fraud?

8 A. Yes.

9 Q. Why would you steal user names and passwords? What
10 value would they have to you as a computer thief?

11 A. Myself, I didn't steal any user names and
12 passwords.

13 Q. Were you ever part of a group that did it?

14 A. Of course, yes.

15 Q. What value — tell the ladies and gentlemen
16 of the jury what value does a user name and password
17 have?

18 A. You can use that account to do all kinds of things
19 like, for example, if you have Facebook account, you can
20 use it to post things on it.

21 Q. Do you know what a Google account is?

22 A. Of course.

23 Q. Do you know what a gmail account is?

24 A. Yes.

25 Q. Do you know in order to log on to gmail you need a

Mr. Catalin Dima - Cross Cont'd

1 user name and password?

2 A. Yes.

3 Q. Do you know anything else.

4 A. No.

5 Q. Last question, last couple of questions, maybe just
6 one, sir:

7 Mr. Goldberg just asked you if — where you
8 spent this weekend, and you spent it with your brother,
9 right?

10 A. Right.

11 Q. Did you and your brother share the same hotel?

12 A. Yes.

13 Q. Did you have meals together?

14 A. Yes.

15 Q. Did you go for walks together and see Cleveland?

16 A. Yes, of course.

17 Q. Did you have the same hotel or separate rooms?

18 A. Separate rooms.

19 Q. And it is your testimony with all the credibility
20 you have that you and your brother, during this weekend,
21 never had a single conversation about this case ever.

22 Is that what you want us all to believe?

23 MR. McDONOUGH: Objection.

24 THE COURT: Sustained.

25 MR. O'SHEA: Nothing further.

Mr. Catalin Dima - Redirect

1 THE COURT: Any redirect?

2 - - - - -

3 REDIRECT EXAMINATION

4 BY MR. McDONOUGH:

5 Q. On cross examination, you were asked about defense
6 Exhibit U. Do you remember that.

7 A. U?

8 Q. Yes, regarding your interview, the questions asked
9 by the Romanian National Police?

10 A. Yes, of course.

11 Q. Do you see on the last page of Defendant's Exhibit
12 U, page 4, these three pictures?

13 A. Yes.

14 Q. Do you recognize any of these pictures?

15 A. The two of them.

16 Q. What two do you recognize?

17 A. First is Radu, and the third is Bogdan.

18 Q. Were you friends with them?

19 A. Not really friends.

20 Q. How so?

21 A. We were working together but not — we didn't
22 share —

23 Q. I'm sorry?

24 A. We were working together but didn't share the
25 same sort of friends like in the normal life with my

Mr. Catalin Dima - Recross

1 family.

2 Q. Different circles?

3 A. Yes.

4 MR. McDONOUGH: No further questions.

5 THE COURT: Recross, Mr. Goldberg?

6 MR. GOLDBERG: Nothing based on that.

7 RECROSS EXAMINATION

8 MR. O'SHEA: I do.

9 BY MR. O'SHEA:

10 Q. Did I just hear you say, sir, that you guys had the
11 same, at least in part, circle of friends. Did you use
12 that term?

13 A. No, no, no. We had different friends for everyday
14 activities for like social things, going out and
15 whatever.

16 MR. O'SHEA: Nothing further.

17 THE COURT: You may step down, sir.

18 Ladies and gentlemen, we are going to take
19 our afternoon recess. Remember the admonition.

20 All rise for the jury.

21 (Recess had.)

22 THE COURT: Please be seated. Government,
23 call your next witness.

24 (Mr. Brown returned, and the following
25 discussion was held:)

Mr. Wertz - Direct

1 MR. BROWN: Thank you, your Honor.
2 Government calls Donald Wertz.

3 DONALD WERTZ
4 called as a witness by and on behalf of the Government,
5 being first duly sworn, was examined and testified
6 as follows:

7 MR. BROWN: May I inquire, your Honor?

8 THE COURT: You may.

9 DIRECT EXAMINATION

10 BY MR. BROWN:

11 Q. Mr. Wertz, would you please state and spell your
12 name for the record?

13 A. Donald, D-o-n-a-l-d, middle name is James, last name
14 W-e-r-t-z.

15 Q. And just to state, where do you live?

16 A. I live in Wadsworth, Ohio.

17 Q. And how long have you lived in Wadsworth?

18 A. Approximately three years.

19 Q. Prior to living in Wadsworth, where did you live?

20 A. Seville, Ohio.

21 Q. And how long did you live in Seville?

22 A. Approximately 7, 8 years.

23 Q. And were you living there between 2011 and 2018?

24 A. Yes.

25 Q. And who do you work for?

Mr. Wertz - Direct

1 A. Allegheny.

2 Q. And what do you do?

3 A. I am a driver.

4 Q. In fact, did you just come straight from
5 work?

6 A. That is correct.

7 Q. Thank you very much.

8 Are you familiar with the website Facebook?

9 A. Yes, that is correct.

10 Q. How are you familiar with Facebook?

11 A. Pretty familiar.

12 Q. Do you have an account?

13 A. That is correct.

14 Q. And how long have you had an account?

15 A. About eight to nine years.

16 Q. Okay. And what do you use Facebook for?

17 A. A lot of friends I work with, lot of family members
18 out of town, lot of people that I know, they use it to
19 talk to family members and people out of town.

20 Q. Okay. And do you have an account at Facebook?

21 A. Yes, that is correct.

22 Q. How did you set up your account with Facebook?

23 A. I just logged on to the website about eight years
24 ago when I opened it up. Asked me like my first, middle
25 name, last name. They asked me an address at the time;

Mr. Wertz - Direct

1 wanted me to set up, enter like a Yahoo mail or gmail to
2 send notifications to?

3 And it also required me to set up a
4 password, so I could access the account when I wanted to
5 go on and off of it.

6 Q. Okay. And is that when you were living in Seville?

7 A. Yes, that's correct.

8 Q. And after signing up, were you ever asked to provide
9 credentials for your security?

10 A. I think it was like a security question, that
11 nature, just if you had ever forgot your password, things
12 like that.

13 Q. Did you ever see a page offering or asking you to
14 confirm your identity or —

15 A. I had a page that I came home one day and asked me
16 for a credit card that was required; asked me to enter my
17 credit card information.

18 The Facebook page it said right on there
19 your account will not be charged. We just need to have
20 some type of number on there to keep your account going.

21 Q. And in addition to credit card information, what
22 information, if any, was asked on that page?

23 A. It asked me the expiration date and the number to
24 the cards I was going to put on there.

25 Q. Did it ask you for your name?

Mr. Wertz - Direct

1 A. Yes, that is correct.

2 Q. Did it ask you for your address?

3 A. I do believe so.

4 Q. Do you recall if it asked for any other personal
5 information?

6 A. I do not believe so.

7 Q. Okay. Before publishing to the jury, could you pull
8 up Exhibit 1427 just to publish to the witness? May we
9 have the Government's back on? Okay.

10 And could you take a look at Exhibit 1427?

11 Do you recognize that?

12 A. Yes, that is correct. This is the screen that
13 appeared that day, which I thought was kind of strange,
14 but like I said, my friends and family used this website
15 to send pictures and communicate back and forth to the
16 family.

17 Yes, that is a screen that appears to be the
18 same as what it was that day.

19 MR. BROWN: Permission to publish to the
20 jury, your Honor?

21 MR. GOLDBERG: No objection.

22 MR. O'SHEA: No objection.

23 BY MR. BROWN:

24 Q. And what about this page made you think it was from
25 Facebook?

Mr. Wertz - Direct

1 A. I just looked on top. I am not too familiar —

2 THE COURT: I am going to ask you to hold on
3 one second, sir.

4 Can you see, folks?

5 BY MR. BROWN:

6 Q. What about this page made you think it was
7 Facebook?

8 A. Just looked at the top upper heading, and it said
9 Facebook. I am not too familiar with computers, but I
10 did see the logo that said Facebook and nothing really
11 looked out of the ordinary.

12 I had thought, hey, as you can see on the
13 screen, it says in the information will only be used to
14 verify your identity. I really didn't think any of it
15 that didn't pop out or anything would be in danger, and I
16 thought it would be okay being that it was Facebook and
17 proceeded to put in my information.

18 Q. Looking at Exhibit 1204, which has been admitted,
19 page 6 line 367, can you pull that up and looking at
20 the — the highlighted line here, do you recognize that
21 name?

22 A. That's my name that appears on the yellow
23 highlighted line.

24 Q. And do you recognize that address next to your
25 name?

Mr. Wertz - Direct

1 A. Yes, that is correct. That is my previous address
2 of Wooster Pike in Seville, Ohio.

3 Q. Okay. And that Seville in Ohio, is that the Zip
4 Code for Seville?

5 A. Yes, 44273.

6 Q. Do you recognize the number next to the Zip
7 Code?

8 A. Yes, that is correct. That's my previous number.

9 Q. Okay. Your cellphone number?

10 A. The 330-201-2294.

11 Q. And do you recognize the number next to the
12 telephone number?

13 A. I do recognize the number. That's a previous bank
14 account, and that would be the last four on the card
15 -9950.

16 Q. Okay. So that was the credit card?

17 A. Yes, that is correct.

18 Q. Okay. And do you recognize if that's the expiration
19 date?

20 A. 6 of 2015, yes, that's correct.

21 Q. Now, have you ever given your credit card
22 information out to people to use?

23 A. I have not.

24 Q. Have you ever allowed your credit card to be used
25 outside of your immediate observation?

Mr. Wertz - Cross

1 A. I have not.

2 MR. BROWN: Those are all the questions I
3 have.

4 I'm sorry.

5 Q. Do you recall approximately when this was?

6 Well, at this time, was your credit card
7 still active in 2015.

8 A. That is correct. In 2015, yes, it was still
9 active.

10 Q. And were you still living in Seville before
11 2015?

12 A. Yes, that is correct.

13 MR. BROWN: No further questions for this
14 witness.

15 THE COURT: Cross?

16 MR. GOLDBERG: No, thank you.

17 THE COURT: Mr. O'Shea.

18 CROSS EXAMINATION

19 BY MR. O'SHEA:

20 Q. Sir, in order to gain access to your Facebook page
21 when you log-in, do you just use a user name and
22 password, and am I correct about that?

23 A. That is correct.

24 MR. BROWN: No redirect, your Honor.

25 THE COURT: You may step down.

Mr. Parton - Direct

1 THE WITNESS: Thank you.

2 THE COURT: Call your next witness.

3 MR. BROWN: Your Honor, the Government calls
4 Ashley Parton.

5 THE COURT: Please step up to the podium,
6 Ma'am. And raise your right hand.

7 ASHLEY PARTON

8 called as a witness by and on behalf of the Government,
9 being first duly sworn, was examined and testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. BROWN:

13 Q. Could you please state your name, and spell it for
14 the record?

15 A. Ashley Parton, A-s-h-l-e-y, P-a-r-t-o-n.

16 Q. Thank you. And Ms. Parton, just city and state,
17 where do you live?

18 A. Kansas City, Missouri.

19 Q. Okay. Could you pull the microphone closer or just
20 speak a little bit louder?

21 And how long have you lived in Kansas City?

22 A. I have lived in Kansas City since 2012.

23 Q. And where did you live before Kansas City?

24 A. I lived in Gladstone, Missouri.

25 Q. And how far away from Kansas City is Gladstone?

Mr. Parton - Direct

1 A. Ten minutes.

2 Q. Is it a suburb?

3 A. It is a suburb, yes.

4 Q. And how long did you live in Kansas City?

5 A. From 2008 to 2011.

6 Q. And while you were living in Gladstone, did you
7 work?

8 A. I was — I worked for CitiBank for a little while,
9 and then I worked for a place called uniforms PRN, and
10 then I was a stay-at-home mother, and I took care of my
11 grandmother who was ill.

12 Q. And approximately what years were you staying home
13 and taking care of your grandmother?

14 A. Between 2009 and 2011.

15 Q. Now, while you were staying home taking care of your
16 family and grandmother, were you looking for work as
17 well?

18 A. Yes.

19 Q. And what sort of work were you looking for?

20 A. I was looking for anything that I could work from
21 home and take care of my daughter and my grandmother.
22 That's what I did.

23 Q. Stay-at-home work or stay-at-home job?

24 A. Yes.

25 Q. And how were you looking for stay-at-home?

Mr. Parton - Direct

1 A. I was looking on online like careerbuilder or
2 monster.com.

3 Q. And using the websites how did you look for work?
4 What did the job search look like?

5 A. Anything that was stay-at-home I would search
6 for.

7 Q. And how would you communicate with potential
8 employers?

9 A. Via e-mail usually.

10 Q. And how would they communicate with you?

11 A. E-mail.

12 Q. And what e-mail were you using at that time?

13 A. I do not remember the e-mail, but I know it was with
14 Yahoo.

15 Q. Okay. And why don't you remember the Yahoo?

16 A. I have — I have been using an e-mail address since
17 then for a very long time, and I don't remember what
18 e-mail I had created to find jobs at that time.

19 Q. Did you have an e-mail that was just for your job
20 search?

21 A. Yes.

22 Q. Do you use that e-mail any more?

23 A. No.

24 Q. Have you used that e-mail — when was the last time
25 you used that e-mail?

Mr. Parton - Direct

1 A. 2011.

2 Q. Now, in 2011, did you get any job offers?

3 A. I did.

4 Q. From what companies did you get a job offer?

5 A. KPL.

6 Q. And what kind of offer did they give you?

7 A. It was to be a transaction agent.

8 Q. So when KPL said "come be a transaction agent," what
9 did that mean to you?

10 A. That meant that I was going to be able to work from
11 home. I would have the flexibility that I needed to work
12 and take care of my grandmother and my daughter.

13 Q. Did KPL tell you what was involved in being a
14 transfer agent?

15 A. They told me that I would be, I would have —

16 MR. O'SHEA: Objection.

17 THE COURT: One moment. Sustained.

18 BY MR. BROWN:

19 Q. What did you understand your job duties to be at
20 KPL?

21 MR. O'SHEA: Objection.

22 THE COURT: Overruled.

23 A. I was going to have to — money would be transferred
24 into my account, and I would just withdraw it and send it
25 via Western Union.

Mr. Parton - Direct

1 Q. Based on your understanding of that job description,
2 did you pursue a job with KPL?

3 A. I did.

4 Q. What I would like to show you right now is
5 Government's Exhibit 1408. If you could just show it to
6 the witness at this time.

7 Now, take a look at this exhibit. Do you
8 recognize it?

9 A. I do.

10 Q. And what do you recognize this to be?

11 A. I recognize the KPL partnership, Martin and then the
12 Yahoo.

13 Q. Is this an e-mail you had with KPL?

14 A. It is not, no.

15 Q. Could we turn to page 2? Do you recognize the name
16 in this e-mail?

17 A. Which name?

18 Q. About a third of the way down. Do you see who it is
19 addressed to?

20 A. To me?

21 Q. Yes.

22 A. Yes.

23 Q. Okay. And why do you not recognize this
24 e-mail?

25 A. I didn't create that particular e-mail. I wouldn't

Mr. Parton - Direct

1 have use the 4 2. I don't recall using that ever.

2 Q. Okay. But do you recall receiving —

3 MR. BROWN: Could we take that down?

4 BY MR. BROWN:

5 Q. Do you recall receiving an e-mail from KPL offering
6 you a job?

7 A. Yes.

8 Q. And do you recall who it was from?

9 A. It was from a Martin.

10 Q. And once you accepted that job, what happened?

11 A. I received my first deposit into my account, and
12 then I went and withdrew it and sent it via Western
13 Union.

14 Q. Now, how would you know when you got a deposit into
15 an account?

16 A. They would either text me or e-mail me.

17 Q. And who would text or e-mail you?

18 A. I believe it was Martin.

19 Q. And what e-mail would he use?

20 A. I don't remember. I know it was a Yahoo.

21 Q. And what text would you use?

22 A. I'm sorry? What was that?

23 Q. How would he text you? What number did he use?

24 A. I don't remember.

25 Q. What number did you give him to text?

Mr. Parton - Direct

1 A. My cellphone number.

2 Q. And is that a cellphone you still have?

3 A. No.

4 Q. What bank account did you use for KPL?

5 A. It was a Bank of America account.

6 Q. Was that your personal account?

7 A. No.

8 Q. Why did you use that Bank of America account?

9 A. Because I didn't want my personal account associated
10 with work.

11 Q. Why not?

12 A. For privacy reasons.

13 Q. So you opened up an account at Bank of America?

14 A. Yes.

15 Q. And you said Martin would text or e-mail you when
16 money was coming in?

17 A. Yes.

18 Q. And what would you do once you received a text or
19 e-mail like that?

20 A. I would go and withdraw the money and then go to
21 Western Union.

22 Q. And what would you do once you got to Western
23 Union?

24 A. I would fill out the form to send money via Western
25 Union and complete the transaction.

Mr. Parton - Direct

1 Q. And where would you get the information to fill out
2 that form?

3 A. From the e-mail or the text.

4 Q. And who would send you that e-mail?

5 A. Martin.

6 Q. Do you recall the address where you would send the
7 e-mail or send the money?

8 A. I remember Bulgaria.

9 Q. What about Bulgaria stood out to you?

10 A. That it was another country.

11 Q. Okay. Were you ever told to send money to the
12 United States?

13 A. No.

14 Q. Now, after you sent the money to Western Union, what
15 did you do?

16 A. Then, there was a percentage of money that I was
17 allowed to keep, so I would take that out of it, and that
18 was then — that was it.

19 Q. And would you receive any other form of payment
20 other than a percentage?

21 A. No.

22 Q. Now, showing you Exhibit 1456, which has previously
23 been admitted, on page 10, do you recognize that bank of
24 America?

25 A. I recognize the Bank of America and the address for

Mr. Parton - Direct

1 the bank.

2 Q. And how do you recognize that Bank of America
3 address?

4 A. That was the Bank of America that I went to.

5 Q. Okay. And do you recall — do you see the amount
6 that is being transferred into that bank account?

7 A. Yes.

8 Q. Does that amount mean anything to you based on your
9 job as a transfer agent?

10 A. That was around the amount that most of the
11 transactions were.

12 Q. Okay. Would they ever vary up? Like were they
13 larger than that?

14 A. I know they were under \$10,000.

15 Q. And about how many transfers did you conduct while
16 working for KPL?

17 A. Approximately five to eight.

18 Q. And how often would you make transfers?

19 A. Maybe once or twice a week.

20 Q. And did there come a time when you stopped working
21 for KPL?

22 A. Yes.

23 Q. Why?

24 A. They were asking me to make new bank accounts and do
25 more transactions per day, and I didn't feel comfortable.

Mr. Parton - Direct

1 I didn't have the time to do that.

2 Q. Okay. And were there any other reasons why you
3 stopped working for KPL?

4 A. I was also contacted by Bank of America. They said
5 there was an investigation —

6 MR. O'SHEA: Objection.

7 THE COURT: Sustained.

8 BY MR. BROWN:

9 Q. Based on the Bank of America contact, what did you
10 do, if anything?

11 A. I gathered up all the of the records that I had
12 kept and took them, made copies, and took them to Bank
13 of America, so they had all of the information that I
14 had.

15 Q. Why did you give Bank of America all of your
16 transaction records?

17 A. They said there was an investigation.

18 MR. O'SHEA: Objection.

19 THE COURT: Sustained.

20 BY MR. BROWN:

21 Q. Was there anything else that happened that led you
22 to stop working for KPL?

23 A. I was also visited by the Kansas City police
24 department.

25 Q. And what, if anything, happened when you were

Mr. Parton - Direct

1 visited by the Kansas City police department?

2 A. They put me in handcuffs and took me to jail for
3 questioning. They put me in a paper suit. After the —
4 they took me in for questioning for a while. After that,
5 about an hour later, they let me go. They did not give
6 me a phone call or anything. I wandered around Kansas
7 City for quite a while trying to find a phone to make a
8 phone call to get home.

9 Q. What do you mean by "paper suit?" I'm sorry.

10 A. They took all of my clothing from me and had me wear
11 very thin clothes made out of a paper-type material.

12 Q. Did anything else happen as a result of that police
13 visit?

14 A. Yes. After that, they came and broke into my
15 window. They were searching my house. They overturned
16 furniture throughout my house searching for stuff. They
17 took my cellphone. I had all of my children's, my
18 daughter's baby photos on there, and then they took my
19 computer as well.

20 Q. Did you ever get your phone back?

21 A. No, I have not.

22 Q. How has that affected your life since then?

23 MR. O'SHEA: Objection.

24 MR. GOLDBERG: Objection.

25 THE COURT: Sustained.

Mr. Parton - Cross

1 MR. BROWN: No further questions.

2 THE COURT: Cross, Mr. Goldberg.

3 MR. GOLDBERG: Thank you for your time,

4 Ms. Parton. No questions.

5 THE COURT: Mr. O'Shea.

6 CROSS EXAMINATION

7 BY MR. O'SHEA:

8 Q. I only have a few questions for you, Ms. Parton.

9 MR. O'SHEA: Can we show her 1408 again?

10 BY MR. O'SHEA:

11 Q. Now, Ma'am, do you see that exhibit in front of
12 you?

13 A. Yes.

14 Q. Now, prior to you coming into this courtroom, had
15 you ever seen that document before?

16 A. Yes.

17 Q. When?

18 A. Just a little bit ago.

19 Q. And that was the first time you had seen this
20 document?

21 A. Yes.

22 Q. And who showed it to you?

23 A. The prosecuting attorneys.

24 Q. Okay. And had you seen this document laying around
25 on the ground? Did you even know what it was until

Mr. Bertke - Direct

1 someone told you what it was?

2 A. No.

3 Q. Okay. Now, let me ask you, can we put up Exhibit
4 1456? Do you remember talking about this document just a
5 moment ago, Ma'am. Let's go to page 10.

6 A. Yes.

7 Q. Now, Ma'am, prior to coming and testifying this
8 afternoon, had you ever seen that document before?

9 A. No.

10 Q. Same questions before; same answers I assume. You
11 hadn't seen it until some prosecutor showed it to you?

12 A. Yes.

13 Q. And if it was laying on the ground, you wouldn't
14 even know what it was?

15 A. Yes.

16 THE COURT: Any redirect?

17 MR. BROWN: No redirect.

18 THE COURT: You may step down, Ma'am. Call
19 your next witness.

20 MR. LEVINE: United States of America calls
21 Clint Bertke.

22 CLINT BERTKE

23 called as a witness by and on behalf of the Government,
24 being first duly sworn, was examined and testified
25 as follows:

Mr. Bertke - Direct

1 DIRECT EXAMINATION

2 BY MR. LEVINE:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. Will you please — move the mike in front of you —
6 and if you could please state and spell your last name
7 for the court reporter?

8 A. Clint Bertke, B-e-r-t-k-e.

9 Q. And Mr. Bertke, where do you live?

10 A. I live in Fort Recovery, Ohio.

11 Q. And how long have you lived in Fort Recovery?

12 A. Forty one years.

13 Q. And who lives with you in Fort Recovery, Ohio?

14 A. My wife and five kids.

15 Q. Five kids. How old are your kids?

16 A. The oldest is 13, youngest is 6.

17 Q. And what do you do for work, Mr. Bertke?

18 A. I build custom cabinetry and trim.

19 Q. And do you work for a particular company?

20 A. It is called Voldy Custom Cabinets.

21 Q. And is that someone else's company, or is that that
22 your company?

23 A. That is my company.

24 Q. And what kind of cabinets do you make?

25 A. Any kind of cabinets that you want.

Mr. Bertke - Direct

1 Q. Do you have any employees that work for your
2 cabinet-making business?

3 A. I do not at this time.

4 Q. Okay. Mr. Bertke, are you familiar with the website
5 eBay.com?

6 A. Yes, I am.

7 Q. How are you familiar with eBay?

8 A. I frequent it. I buy things off it.

9 Q. What type of things have you purchased on eBay?

10 A. Little things like office supplies as big as a
11 car.

12 Q. You purchased a car on eBay?

13 A. Yes, I did.

14 Q. When was that?

15 A. About six years ago.

16 Q. Was that — do you remember the particular year?

17 A. It would have been like 2013.

18 Q. What kind of car was it that you purchased?

19 A. A 1972 Cutlass.

20 Q. And is that — did you actually receive that
21 car?

22 A. Yes.

23 Q. How many times would you say you made purchases on
24 eBay?

25 A. I would say at least twice a week.

Mr. Bertke - Direct

1 Q. Twice a week from what period to what period. Was
2 it for years?

3 A. Yeah, probably a decade or more.

4 Q. All right. And did you ever look into purchasing a
5 pickup truck on eBay?

6 A. Yes, I did.

7 Q. And what kind of pickup truck was it?

8 A. It was a Ford F 150.

9 Q. Can we bring up just for us Government's Exhibit
10 1333. All right.

11 Are you familiar with the e-mail address
12 Clint Bertke @ hotmail.com?

13 A. Yes, I am. That is my address.

14 Q. And is that your current e-mail address?

15 A. Yes, it is.

16 Q. Are you familiar with the phone number
17 419-852-2130?

18 A. Yes, I am.

19 Q. And how are you familiar with that number?

20 A. That is my current cellphone number.

21 MR. LEVINE: Can we publish this to the
22 jury, your Honor?

23 THE COURT: Any objection?

24 MR. GOLDBERG: No objection.

25 MR. O'SHEA: No objection.

Mr. Bertke - Direct

1 THE COURT: All right.

2 MR. LEVINE: Thank you, your Honor.

3 BY MR. LEVINE:

4 Q. Looking at the e-mail dated July 26, 2010, is that
5 your e-mail address in the "to" field?

6 A. Yes, it is.

7 Q. And what is the e-mail address in the "from" field?

8 A. It is P-r-o-n-t-o 251 @ Yahoo.com.

9 Q. And prior to this e-mail interaction, were you
10 familiar with the e-mail address P-r-o-n-t-o 251 @
11 Yahoo.com?

12 A. No.

13 Q. What is the subject line of this July 26th, 2010,
14 e-mail?

15 A. "Clint Bertke, my F 150 for sale."

16 Q. All right. And is that your name in the subject
17 line of the e-mail?

18 A. Yes, it is.

19 Q. Okay. Could you please read that e-mail for us, the
20 July 26 e-mail?

21 A. "Hi there. I am e-mailing to let you know that my
22 '04 Ford F 150 is still available. I had a buyer, but I
23 could not get the deal done because I didn't get his loan
24 approved. I am still interested to sell, and I am
25 willing to let it go for less as long as you get this

Mr. Bertke - Direct

1 done fast. I have also attached a few pictures of the
2 truck. Let me know if you are interested. Thank you."

3 Q. Thank you very much.

4 Before receiving this e-mail, had you been
5 interested in purchasing a Ford F 150?

6 A. Yes.

7 Q. And was it for your personal use or cabinet-making
8 business?

9 A. Permanent use.

10 Q. And before receiving this e-mail, had you
11 communicated with the purported seller of the
12 Ford F 150?

13 A. Yes.

14 Q. And this e-mail says "I have attached a few pictures
15 of the truck." Did you click any attachments to this
16 e-mail?

17 A. Yes, I did.

18 Q. Scroll down a little bit, and is that your response
19 we see on July 27, 2010?

20 A. Yes, it is.

21 Q. Could you read your response?

22 A. "Hi. My name is Clint. And yes, I am still
23 interested in the '04 F 150. If you could call me at
24 419-852-2130, and we will set up a time to see and test
25 drive the truck. Also, I have cash in hand, so there

Mr. Bertke - Direct

1 will be no wait for the loan. Again" or "thanks again,
2 Clint, Clint Bertke."

3 Q. Do you recognize the phone number in that
4 e-mail?

5 A. That is my phone number.

6 Q. And if we could now scroll up to the next e-mail.
7 Okay.

8 And was this the response you received from
9 the seller?

10 A. Yes, it is.

11 Q. Could you please read the response from the
12 seller?

13 A. "Clint, I have reenlisted the truck on eBay. As I
14 said before, right now I am on a business trip and,
15 unfortunately, forgot my cellphone or cell, so it is best
16 if you just e-mail me. The truck is in OR. However,
17 shipping is already paid because my buyer changed his
18 mind after I had made arrangements to ship the truck. It
19 is ready to ship at any time."

20 Q. And then, does the e-mail continue with item?

21 A. "There is item number 170515682914. You could
22 search it on eBay. Buy it now price, \$9,300, shipping
23 included, clear — title is clear. No problem with the
24 vehicle whatsoever. If you are interested, please use
25 the eBay or use the buy-it-now option on eBay.

Mr. Bertke - Direct

1 "You can even choose to have eBay hold the
2 money until you get the truck and inspect it at your own
3 place, so you would be totally protected."

4 Q. And if you could please read the line after the —
5 the words after "ex-mailer"?

6 A. Okay. "It is courier 3.50 period 00 period 09
7 period 1098.

8 Q. And then is there a website after that?

9 A. Yes, HTTP w w w.R-o-s-e-c-i-t — mine just went
10 blank — there it is. It is www.rosecitysoftware.com.

11 Q. Now, after receiving this e-mail, did you attempt to
12 purchase the Ford F 150?

13 A. No.

14 Q. At some point after July 26, 2010, did you realize
15 your computer was infected with a virus?

16 A. Yes.

17 MR. GOLDBERG: Objection.

18 THE COURT: Sustained.

19 BY MR. LEVINE:

20 Q. What happened after July 26th, 2010?

21 A. I noticed my computer wasn't running right. There
22 was something wrong with it.

23 Q. And do you remember approximately when that was?

24 A. I am not real sure.

25 Q. Okay. And what did you do when you realized

Mr. Bertke - Direct

1 something was wrong with your computer?

2 A. My wife's cousin is a computer guru, so I got ahold
3 of him. He came over and fixed it.

4 Q. Okay. When you say he is a computer guru, what does
5 he do?

6 A. He is like an IT specialist for brightnet.com.

7 Q. And what is brightnet.com?

8 A. It is a local server.

9 Q. And your wife's cousin was able to solve the
10 problem?

11 A. Yes, my wife's cousin.

12 Q. And if you can bring up Government's Exhibit 1204
13 and go to page 2 of 1204 and zoom in around line 96
14 and then line 96, looking at the fourth column of
15 line 96 of Government's Exhibit 1204, do you see your
16 name there?

17 A. Yes, I do.

18 Q. And looking at the columns to the right of your
19 name, do you recognize the address 299 Lowry Road, Fort
20 Recovery, Ohio 45846?

21 A. Yes. That is my current address.

22 Q. Was it also your address in 2010?

23 A. Yes, it was.

24 Q. And looking at the next column to the right, do you
25 recognize the phone number 419-852-2130?

Mr. Bertke - Direct

1 A. Yes.

2 Q. What is that number?

3 A. That is my current cellphone number.

4 Q. And was it also your cellphone number in 2010?

5 A. Yes, it was.

6 Q. And looking at the next column to the right, do you
7 recognize that number?

8 A. Yes, I do.

9 Q. And what is that number?

10 A. That is my credit card number.

11 Q. And how do you remember — first of all, is it your
12 current credit card number?

13 A. No, it is not.

14 Q. Was it your credit card in the 2010 time frame?

15 A. Yes, it was.

16 Q. How do you remember that that was your credit card
17 number?

18 A. I pretty much memorized it. I had that card since I
19 was 18.

20 Q. And did you use that card frequently?

21 A. Yes.

22 Q. And was there a time you noticed charges on your
23 credit card statement that weren't your charges?

24 A. Yes.

25 Q. Were these unauthorized charges?

Mr. Bertke - Direct

1 A. Yes, they were.

2 Q. Were they small or large charges?

3 A. They were small.

4 Q. Looking at the third column over from the left, are
5 you familiar with a company called Craigslist?

6 A. Yes.

7 Q. Have you ever made any credit card charges to
8 Craigslist?

9 A. No, I have not.

10 Q. Are you familiar with a company called Yahoo
11 hosting?

12 A. No.

13 Q. Have you ever made any credit card charges with
14 Yahoo hosting?

15 A. No.

16 Q. Are you familiar with a company called Indeed?

17 A. No.

18 Q. Have you ever made any credit card charges to
19 Indeed?

20 A. No, I have not.

21 Q. Once you found charges on your credit card
22 statements that you hadn't put on there, what did you
23 do?

24 A. I called Discovercard up.

25 Q. And what did you do when you called the company?

Mr. Bertke - Direct

1 A. They had immediately canceled the card.

2 Q. And did you have to pay for the unauthorized charges
3 on your credit card?

4 A. I did not.

5 Q. Did the incident have any other impact on you or
6 your business?

7 MR. GOLDBERG: Objection.

8 THE COURT: Overruled. You may answer, sir.

9 A. Yes, it did.

10 Q. What impact did it have?

11 A. I have suppliers that keep that credit card number
12 on hand, so I had to contact all my suppliers to tell
13 them what was happening, and I would get them a new
14 credit card number as soon as possible.

15 Q. Okay. What county is Fort Recovery in?

16 A. It is in Mercer.

17 Q. Where is Mercer?

18 A. It is between Darke and Van Wert counties.

19 Q. What city is Fort Recovery closest to?

20 A. The biggest city would be Celina.

21 Q. How far from here, how long did it —

22 A. Around four hours.

23 MR. LEVINE: No further questions.

24 THE COURT: Cross?

25 MR. GOLDBERG: Thank you, no questions.

Mr. Bertke - Cross

1 Q. And how long ago was that, sir?

2 A. That was on Sunday afternoon-evening.

3 Q. And who showed it to you?

4 A. That man right there.

5 Q. Okay. One of those good looking fellows right
6 there? (Indicating.)

7 A. Yeah.

8 Q. Okay. And if you had seen it laying on the
9 ground, had they not shown it to you, would you know what
10 it is?

11 A. No, I wouldn't.

12 Q. And let me have you see Exhibit 1204 as well.

13 Same question, sir, had you seen this
14 document before you sat down here this afternoon?

15 A. Yes.

16 Q. And where had you seen it, same time as the other
17 one?

18 A. Yes.

19 Q. Now, had you — had it been laying on the ground,
20 would you even know what it was had someone not pointed
21 out exactly what it is?

22 A. No.

23 MR. O'SHEA: Nothing further, Judge.

24 THE COURT: Any redirect.

25 MR. LEVINE: No redirect, your Honor.

1 THE COURT: You may step down, sir.

2 Call your next witness.

3 MR. BROWN: Subject to the admission of
4 exhibits into evidence, the Government would rest at this
5 time.

6 THE COURT: Ladies and gentlemen, we have
7 issues that we need to address outside of your hearing,
8 so we will adjourn for the evening.

9 This case is not over. Do not form any
10 opinion regarding this matter. Do not talk about it
11 amongst yourselves or with anyone else. Please be
12 downstairs at 9:00 a.m. We will call for you at that
13 time.

14 All rise for the jury. Have a good evening,
15 folks. See you in the morning.

16 (Jury out.)

17 THE COURT: Please be seated. Let's begin
18 by going over the exhibits from today.

19 MR. O'SHEA: A moment please, Judge?

20 THE COURT: Certainly.

21 MR. O'SHEA: All set?

22 THE COURT: Ready?

23 MR. O'SHEA: Yes, Judge.

24 THE COURT: All right. 29, 20, 1419, 1144.

25 MR. McDONOUGH: Your Honor, for 1419, we

1 would be offering page 5, the picture of the house in
2 Harman.

3 THE COURT: That's page 5 only?

4 MR. McDONOUGH: Correct.

5 MR. O'SHEA: Objection, Judge, as to
6 that Exhibit 1419, page 5, just the photograph itself.
7 I don't know about the process and all the verbal —
8 not that I expect any of our jurors to understand
9 Romanian.

10 THE COURT: So you want all of the verbiage
11 to be redacted?

12 MR. O'SHEA: All of it, just the photograph.

13 MR. McDONOUGH: Correct. We would redact
14 it, so it would show just the black and white photograph.

15 MR. O'SHEA: Okay.

16 THE COURT: 1144, 1126. Are you offering
17 1408?

18 MR. LEVINE: I don't think so, your Honor.
19 No, we are not.

20 MR. O'SHEA: You are not offering 1408?

21 MR. BROWN: No.

22 THE COURT: 1333, on behalf of the
23 Government for today only, did I miss anything?

24 MR. BROWN: No. Your Honor, that looks like
25 the complete list.

1 THE COURT: Okay. Now, I want to go back to
2 the exhibits that we had discussed early in the trial and
3 that you indicated you wanted to hold off until the
4 conclusion of your case.

5 1320 are you offering?

6 MR. LEVINE: Is that a physical exhibit?

7 THE COURT: No. That's not physical. You
8 are not offering?

9 MR. LEVINE: No.

10 THE COURT: 1324, are you offering?

11 MR. LEVINE: Yes, we are.

12 MR. O'SHEA: All five pages?

13 MR. LEVINE: We made redactions consistent
14 with the Court's ruling at the time. That's why we
15 didn't offer it at the time, but yes, pages subject to
16 the redactions that are already on the exhibit.

17 THE COURT: Any objection with redactions,
18 Mr. Goldberg?

19 MR. GOLDBERG: No, your Honor.

20 THE COURT: And Mr. O'Shea.

21 MR. O'SHEA: No, your Honor.

22 THE COURT: 1325, are you offering.

23 MR. LEVINE: Yes, we are, your Honor. As
24 with the last one redacted as per the Court's order at
25 the time.

1 THE COURT: Any objection to the redaction?

2 MR. GOLDBERG: Who did this come in through?

3 MR. LEVINE: This came in through Special
4 Agent Stacy Lough with further authentication from Chris
5 Drake.

6 MR. GOLDBERG: No objection.

7 MR. O'SHEA: Same, Judge.

8 THE COURT: 1893, are you offering?

9 MR. BROWN: Your Honor, I believe that was
10 subject to redaction, so we would be offering.

11 MR. GOLDBERG: Can you scan it real quick?

12 THE COURT: With redaction, Mr. Goldberg,
13 any objection?

14 MR. GOLDBERG: Who did it come in through?

15 MR. BROWN: Special Agent Diaz.

16 MR. GOLDBERG: No objection.

17 MR. O'SHEA: No objection, Judge.

18 THE COURT: 1322?

19 MR. LEVINE: I think we may have discussed
20 this one. Yes, I think this one —

21 THE COURT: You are offering?

22 MR. LEVINE: Yes. I think we may have went
23 around circle on this one, and I think there was no
24 objection to it.

25 THE COURT: I'm sorry. I don't think we had

1 formally had it offered and admitted. So you are
2 offering 1322?

3 MR. LEVINE: Yes, your Honor.

4 THE COURT: And any objection.

5 MR. GOLDBERG: No objection, your Honor.

6 MR. O'SHEA: No objection, Judge.

7 THE COURT: Admitted. 1869. I'm sorry.

8 I'm sorry. Yes, yes, 1869.

9 MR. O'SHEA: I have an objection.

10 THE COURT: Hang on. So you are offering
11 1869, Mr. Levine?

12 MR. BROWN: We are not offering it.

13 MR. LEVINE: Not offering, your Honor.

14 MR. O'SHEA: Never mind.

15 THE COURT: 1896.

16 MR. BROWN: Not offering.

17 THE COURT: 402, are you offering.

18 MR. O'SHEA: How many pages is that, guys,
19 half and half. There is some translations after the
20 Romanian version.

21 I object.

22 THE COURT: Hang on. I don't know if they
23 are offering.

24 MR. O'SHEA: I'm sorry. Right, right.

25 MR. BROWN: Not offering, your Honor.

1 THE COURT: Okay. 4?

2 MR. LEVINE: We are not offering that one,
3 your Honor.

4 THE COURT: 1321, are you offering?

5 MR. LEVINE: We are conferring, your Honor.

6 THE COURT: Oh, sure.

7 (Pause.)

8 MR. BROWN: We will offer it, your Honor.

9 MR. O'SHEA: Can I see all three pages? Try
10 to go to the first page. Object.

11 THE COURT: Hang on.

12 MR. GOLDBERG: I would object to this
13 exhibit as well, your Honor.

14 THE COURT: And Mr. O'Shea, you are as well?

15 MR. GOLDBERG: Yes. I can state my reasons
16 if you need.

17 THE COURT: You go right ahead.

18 MR. O'SHEA: If you go down three quarters
19 of the way down to the bottom of page 1, it says "the
20 following example, almost all these accounts are, quote,
21 obvious fraud," stuff like that.

22 MR. LEVINE: So your Honor, I am just
23 looking in here, this is basically, if you recall the
24 testimony of Chris Drake, he identified 19,000 e-mails
25 from Defendants, and this is just a summary of what

1 criteria he used to identify those 19,000 e-mails, but
2 the specific e-mails, the specific e-mails that we are
3 admitting are the ones discussed through witnesses and
4 already admitted, and this just helps how he identified
5 the 19,000 e-mails.

6 THE COURT: Isn't that what his testimony is
7 for?

8 MR. LEVINE: This is a summary of his
9 testimony.

10 THE COURT: That's the problem, a summary of
11 his testimony.

12 MR. LEVINE: It is a summary of the 19,000
13 e-mails and the criteria which was used. That's why I
14 feel it is a fair Rule 1006 summary. The obvious words
15 like "obvious fraud" we can redact out. He used first,
16 the ex-mailer header; secondly, the e-mail subjects he
17 used; third, flagging customers —

18 THE COURT: But the bottom line is, you are
19 offering it as substantive evidence, and you are
20 referring to 1006 as summary?

21 MR. LEVINE: As Rule 1006 summary.

22 THE COURT: Right. That's your basis,
23 Mr. Goldberg?

24 MR. GOLDBERG: I disagree. I agree with
25 Mr. O'Shea. This is basically the witness' testimony put

1 into an e-mail that he sent to the — sent for
2 investigatory purposes.

3 THE COURT: I agree. I don't think it is —
4 it comes under summary evidence. I am not going to
5 permit it.

6 MR. BROWN: Thank you, your Honor.

7 THE COURT: 1204 are you offering?

8 MR. LEVINE: I believe 1204 has already been
9 admitted, your Honor.

10 THE COURT: Oh, I apologize. It has been.
11 It has been.

12 5 are you offering?

13 MR. LEVINE: Moving to the English
14 translation, no, we are not, your Honor.

15 THE COURT: 2045 are you offering?

16 MR. LEVINE: So this is a certification from
17 Master Fraud. The Court already ruled on this
18 certificate, first authentication motion, and Defendant
19 stipulated to it.

20 So I guess we would be willing —

21 THE COURT: I am going to ask you to keep
22 your voices up for the court reporter.

23 MR. BROWN: Offering the stipulation, your
24 Honor.

25 THE COURT: Any objection?

1 MR. GOLDBERG: No objection.

2 MR. O'SHEA: As to authenticity, no
3 objection. Can I see the second? This is all stuff that
4 was found at Nicolescu's house?

5 MR. LEVINE: The ones that say Nicolescu's
6 house.

7 MR. O'SHEA: Pop up again, if you go to —
8 about there.

9 (Pause.)

10 MR. O'SHEA: One more up.

11 (Pause.)

12 MR. O'SHEA: No objection, Judge.

13 THE COURT: I believe 367 has been admitted,
14 yes?

15 MR. O'SHEA: It has certain pages of 367
16 have been admitted. We would like to make sure that page
17 688 is one of them.

18 If you can pull up that page.

19 THE COURT: So you are adding 688 to what we
20 have already admitted. Am I right?

21 MR. LEVINE: If it has not already been
22 admitted.

23 THE COURT: It has not been. Any objection,
24 Mr. Goldberg?

25 MR. GOLDBERG: No, your Honor.

1 MR. LEVINE: This isn't the right page, your
2 Honor.

3 THE COURT: Page 688?

4 MR. LEVINE: Yes. We are determining the
5 correct page, your Honor. I'm sorry. This is my fault.
6 668, I'm sorry, your Honor.

7 THE COURT: 668. All right. No problem.

8 MR. O'SHEA: Judge, I'm sorry.

9 THE COURT: Hang on.

10 Mr. Goldberg?

11 MR. GOLDBERG: No objection.

12 THE COURT: Mr. O'Shea?

13 MR. O'SHEA: Objection, Judge, for the same
14 reasons we talked about when portions of 367 were
15 previously admitted, incorporate by reference.

16 MR. LEVINE: So your Honor, we would redact
17 out the two nicks at top the nicu and dan. But the
18 reason we didn't cover it initially, we hadn't yet
19 established that ferdy was associated with the files.

20 We now have had six Romanians come in and
21 say that ferdy was Miclaus, and Romeo was Danet. So we
22 would redact out the other names, and the rest would be
23 what we would like to admit on this page.

24 THE COURT: I will allow —

25 MR. GOLDBERG: I was going to object to the

1 redaction. I am not objecting to the exhibit. I object
2 to them redacting names off the page.

3 MR. LEVINE: We are okay with not redacting.

4 THE COURT: Fair enough. So 668 is added
5 without redaction, and that's 367. All right.

6 MR. LEVINE: Thank you, your Honor.

7 THE COURT: 380 are you offering?

8 MR. LEVINE: Yes, we are, your Honor.

9 THE COURT: Any objection?

10 MR. LEVINE: If we could look at the English
11 version.

12 So we asked the witness about — I think it
13 is the next page. So we are specifically interested in
14 admitting page 7 of Government's Exhibit 380, which is
15 all between Danet and Nicolescu as the testimony.

16 THE COURT: So you are only offering page 7
17 of 380?

18 MR. LEVINE: Correct, your Honor.

19 THE COURT: Any objection?

20 MR. GOLDBERG: Well, I do object. There is
21 no date, timestamp on these messages. I know that
22 Danet authenticated it during his testimony, I believe he
23 did. Page 7 also does contain a lot of extraneous,
24 potentially prejudicial material that doesn't have
25 anything to do with the case. I am looking at the first

1 large message.

2 MR. LEVINE: So, your Honor —

3 THE COURT: Let him finish.

4 MR. LEVINE: Oh, I'm sorry.

5 MR. GOLDBERG: Half of that first message
6 seems to be extraneous. There is also message one, two,
7 three, fourth message below that. There is stuff about
8 Gypsies hotels, how is the hotel — seems extraneous to
9 me not relating to anything relevant here.

10 If the Court will admit it, I would ask that
11 those irrelevant statements be redacted, but I object to
12 the exhibit itself because it is not timestamped. I
13 don't believe there was any testimony as to when these
14 conversations took place, and if there was, I know my
15 colleagues will correct me.

16 THE COURT: Mr. O'Shea?

17 MR. O'SHEA: It doesn't even mention my
18 client, so I am not worried about it.

19 THE COURT: So you are not objecting?

20 MR. O'SHEA: No.

21 THE COURT: Mr. Levine.

22 MR. LEVINE: Yes, your Honor. So Danet —
23 this was taken from Danet's phone when he arrived in
24 Miami and phone searched.

25 Danet testified as to the conversation in

1 the first — not the first line — but the second, third,
2 fourth, fifth, and sixth line there, and what his
3 testimony was that conversation between him and Nicolescu
4 was about sending a spam room of 20,000 e-mails and only
5 getting one credit card as a result, and that he put it
6 on a file that was on the command and control server that
7 was called the Vanghelie file, which they named after a
8 mayor in Bucharest who was known to be not that smart.

9 So it was fully authenticated by Danet
10 without the time date. The reason there is no time date
11 is on Danet's phone there were two files forensically
12 found associated with the Jabber application.

13 One file contained a log of his current
14 conversations, and another contained a log of his deleted
15 conversations. This is from the deleted conversations,
16 and apparently, Jabber only stores the conversation
17 itself and not the time, date once you delete it, and
18 that's why that is not here.

19 THE COURT: What about the argument of
20 extraneous matter?

21 MR. LEVINE: We are really only interested
22 in those five lines, and we don't oppose redacting the
23 rest of the exhibit.

24 THE COURT: I am going to allow it with the
25 redaction.

1 THE COURT: No problem. Any others you want
2 clarification on?

3 MR. LEVINE: So there were four exhibits
4 that are stipulations.

5 THE COURT: Okay. But Mr. Levine, I will
6 ask you to hang on one second.

7 First of all, any other exhibits, do you
8 have any question about anything we have done from March
9 25th until today?

10 MR. LEVINE: No, other than these —

11 MR. BROWN: No.

12 THE COURT: Okay. So secondly, now, we are
13 turning to exhibits that have not been discussed yet, are
14 there any other exhibits?

15 MR. BROWN: Yes. We have four that
16 would come in pursuant to the stipulation with
17 Paul Mueller.

18 THE COURT: Paul Mueller?

19 MR. BROWN: Yes, and that would be 1104,
20 1462, 1689, and 1836.

21 THE COURT: Okay. Let's start with 1104.

22 MR. GOLDBERG: Yes, no objection.

23 MR. O'SHEA: Can I see page 2, page 3, page
24 4, no objections.

25 THE COURT: 1462.

1 MR. O'SHEA: These are all through what
2 stipulation?

3 MR. BROWN: Paul Mueller.

4 MR. O'SHEA: Thank you.

5 MR. GOLDBERG: No objection.

6 MR. O'SHEA: One moment, Judge.

7 THE COURT: Sure.

8 MR. O'SHEA: Page 1, if I could; page 2
9 again, no objection, Judge.

10 THE COURT: 1689?

11 MR. GOLDBERG: No objection.

12 MR. O'SHEA: And we are just looking for the
13 document itself to be admitted?

14 MR. BROWN: This was pursuant to
15 stipulation.

16 MR. O'SHEA: Yeah, all right. You are just
17 looking for this certain authenticity. Yeah, no
18 objection.

19 THE COURT: 1836?

20 MR. GOLDBERG: No objection.

21 MR. O'SHEA: Can I go to the first page one
22 more time?

23 (Pause.)

24 MR. O'SHEA: No objection.

25 THE COURT: Mr. Levine, any other —

1 Mr. McDonough?

2 MR. McDONOUGH: Yes, your Honor.

3 I wanted just to confirm three exhibits for
4 a previous witness Donna Wolfe.

5 The Government was offering Government's
6 Exhibit 1733 —

7 THE COURT: Okay. Hang on. You are just
8 confirming?

9 MR. McDONOUGH: Yes, your Honor.

10 THE COURT: Hang on. You just want to know
11 if we've addressed it already?

12 MR. McDONOUGH: Correct. And if not, I
13 would move to have them admitted.

14 THE COURT: 1733 has been admitted.

15 MR. McDONOUGH: Page 12 only, the mule
16 contract and Government's Exhibit 2253, these are the
17 Keleman-Donna text messages to Donna's cellphone.

18 THE COURT: They have been admitted.

19 MR. McDONOUGH: I was offering — the
20 Government was offering three groups of pages.

21 THE COURT: Folks, those were admitted.

22 MR. McDONOUGH: I believe we only showed
23 some of those — some of those pages, your Honor.

24 We would offer pages 1 to 40, 42 to 47 and
25 50 to 95 and Government's Exhibit 1735.

1 THE COURT: I have down here 2253 has been
2 admitted, but now you are saying you are only offering
3 pages 1 to 40, 42 to 47 —

4 MR. McDONOUGH: And 50 to 95.

5 THE COURT: 50 to 95. Okay. Next
6 exhibit?

7 MR. McDONOUGH: Next exhibit is —

8 MR. O'SHEA: One moment, Judge, if I may.

9 THE COURT: Those have already been
10 admitted. That's why I am a little confused.

11 MR. O'SHEA: I was getting confused by your
12 confusion. I apologize, Judge. The entire exhibit is
13 admitted, not just specific pages.

14 THE COURT: That was my understanding, but
15 now I am hearing they do not want to offer the entire
16 exhibit.

17 MR. McDONOUGH: Correct. I was just
18 offering those pages. I will deal with — they are all
19 dealing with Donna Wolfe pages.

20 Any additional pages involving additional
21 people I am not offering.

22 MR. O'SHEA: 2253 is 95 pages? Can I look
23 at it tonight to make sure?

24 MR. GOLDBERG: The problem that I have with
25 admitting the whole thing now, drawing it back because I

1 used it to cross examine Valentin Danet, and I for one
2 object to withdrawing the whole exhibit, your Honor —

3 MR. McDONOUGH: If there is an objection, I
4 will offer the whole exhibit, your Honor.

5 MR. GOLDBERG: — if it has already been
6 admitted. I feel like that looks — that gives the wrong
7 impression.

8 THE COURT: Well, I absolutely would then
9 allow you to offer the remaining pages, but if we are
10 going to make it nice and easy and just offer the whole
11 thing, that's fine.

12 But I would always then give you the
13 opportunity to offer what they don't.

14 MR. GOLDBERG: Thank you.

15 THE COURT: But go ahead, Mr. McDonough,
16 what's your pleasure?

17 MR. McDONOUGH: And then, on that one, as I
18 say, we would be happy to offer the whole thing. If
19 there is an objection, we — on that one.

20 And last one, Government's Exhibit
21 1735, these are all of Donna Wolfe's Western Union
22 receipts.

23 THE COURT: 1735 has been admitted.

24 MR. O'SHEA: No problem.

25 THE COURT: It has been admitted.

1 MR. O'SHEA: Yeah. 213 pages.

2 THE COURT: Okay. Any other exhibits you
3 need clarification on?

4 MR. McDONOUGH: No, your Honor.

5 MR. BROWN: No, your Honor.

6 THE COURT: Any other exhibits you are
7 offering into evidence?

8 MR. LEVINE: I don't think so, your
9 Honor.

10 THE COURT: Do you have a need to go back
11 through all of the exhibits, or is everyone — in other
12 words to have a listing?

13 Is everyone comfortable that their records
14 are straight?

15 MR. GOLDBERG: The Government provided us
16 with an updated admitted list, and if they could provide
17 us with another one, I think we are like 90 percent of
18 the way there.

19 THE COURT: Do you have any problem doing
20 that?

21 MR. LEVINE: No, your Honor.

22 THE COURT: That would be nice. All right.

23 MR. GOLDBERG: And we appreciate it.

24 THE COURT: All right. That's very generous
25 of you. All right.

1 Mr. Levine, looks like you want to speak.

2 MR. LEVINE: Thank you, your Honor.

3 THE COURT: I can tell.

4 MR. LEVINE: You were talking about jury
5 instructions at the end of last week.

6 THE COURT: Right. But I think we have
7 other matters to address before we get to jury
8 instructions.

9 Formally, Mr. Levine, is the Government now
10 resting?

11 MR. BROWN: Yes, your Honor. Now that the
12 exhibits have been admitted, the Government rests.

13 THE COURT: All right.

14 Mr. Goldberg?

15 MR. GOLDBERG: Your Honor, we will make a
16 motion pursuant to Rule 29(a) .

17 MR. O'SHEA: Before we do that, I don't mean
18 to interrupt, I don't know — I am ready to give a Rule
19 29 argument at this very second. Maybe Mr. Goldberg is,
20 but —

21 MR. GOLDBERG: I assumed that's where we
22 are.

23 MR. O'SHEA: I am not sure that's where we
24 were. Don't you have exhibits first?

25 THE COURT: You still have to do 29 first.

1 MR. GOLDBERG: Yeah.

2 THE COURT: Then, I am going to call on you.

3 MR. GOLDBERG: If you are not ready —

4 MR. O'SHEA: If you are ready, go ahead.

5 Does the Government — let me ask you this: Does the
6 Government — are they looking to dismiss out any of the
7 counts, or are you going forward with everything?

8 MR. BROWN: Going forward with everything.

9 MR. O'SHEA: Okay. All right.

10 MR. GOLDBERG: Your Honor, do you want to
11 hear Rule 29 now, or would you prefer that we do it first
12 thing in the morning?

13 THE COURT: Well, the jurors are coming in
14 9:00. I think now is the time to do it.

15 MR. GOLDBERG: Thank you.

16 THE COURT: And folks, if you need a short
17 recess, I am happy to give it to you.

18 MR. O'SHEA: I am fine with a short recess.
19 I am not ready to jump into that pool yet, Judge, doing
20 some clerical things first.

21 THE COURT: And gentlemen, would you like
22 your clients to be present?

23 MR. O'SHEA: For the Rule 29 stuff, I don't
24 think they need to be present.

25 MR. GOLDBERG: Your Honor, I have discussed

1 it with my client, and he understands his right to be
2 present, and he is going to waive that right in order to
3 facilitate his way back.

4 THE COURT: Mr. Nicolescu, you understand
5 what we are doing at this portion of the trial,
6 correct?

7 DEFENDANT NICOLESCU: Yes.

8 THE COURT: And is it your desire to waive
9 your presence and be transported back —

10 DEFENDANT NICOLESCU: Yes.

11 THE COURT: — to wherever you are being
12 held?

13 DEFENDANT NICOLESCU: Yes, that is my
14 desire.

15 THE COURT: All right. Thank you, sir.

16 Mr. Miclaus, the same question, sir: You
17 understand what we are doing?

18 MR. MICLAUS: Yes.

19 THE COURT: Your lawyer is going to be
20 arguing dismissal of some or all counts, and are you
21 waiving your presence?

22 MR. MICLAUS: Yes.

23 THE COURT: All right. Both gentlemen can
24 be excused, and folks, let's take a quick restroom break,
25 so not a long one.

1 (Recess had.)

2 THE COURT: Mr. Goldberg?

3 MR. GOLDBERG: Thank you, your Honor.

4 Defendant Nicolescu move, pursuant to Rule
5 29(a) of the Federal Rules of Criminal Procedure, for a
6 judgment of acquittal with regard to all the counts in
7 the indictment.

8 We submit to the Court that the evidence
9 adduced so far in the trial up and through the resting of
10 the Government has not been sufficient beyond a
11 reasonable doubt, even taking it in a light most
12 favorable to the Government to sustain any of the
13 counts.

14 I am going to talk about two counts in
15 particular or several counts in particular where I am
16 making a blanket motion for Rule 29 judgment of
17 acquittal.

18 But I would ask the Court to look at the
19 specific wire fraud separate counts, Counts 2 through 13,
20 and we only heard from one victim, Mr. Patterson from
21 Webster, New York with regard to these counts.

22 We heard from other victims, but with regard
23 to these specific counts, we only heard from
24 Mr. Patterson. I believe the Government will argue that
25 Donna Wolfe being the common money mule for all these

1 transactions supplied the requisite evidence in terms of
2 the wire fraud counts.

3 However, in looking over the jury
4 instructions, one of the elements is reliance, someone
5 relied on a false statement in paying money, and we can
6 infer the reliance by the evidence we have here to a
7 degree.

8 But to have victims stated, specific amounts
9 stated and not hear the victims in Court indicating that
10 they in fact relied on the representations I think is a
11 failure of the evidence.

12 More specifically, also, your Honor, and
13 moving on to the false domain name enhancement, we had
14 two witnesses, Special Agent — supervisor Special Agent
15 Macfarlane and Liam O'Murchu. We may have heard from the
16 AOL representative as well indicating that they saw false
17 domain names being registered.

18 We didn't see any evidence of either wire
19 shark or documentary evidence that they saw the specific
20 domain names listed in the indictment actually being
21 registered.

22 We have Agent Macfarlane and I think
23 Mr. O'Murchu saying that as they were observing evidence
24 during either as data interception Title III, one of the
25 servers, or during Mr. O'Murchu's undercover work with

1 his infected machine, he saw this activity when the
2 Government tried to use the indictment to guide the
3 witness to say which domain names were registered.

4 The Court prevented the Government from
5 doing that, and I would suggest that the Government
6 needed to establish which domain names specifically were
7 registered pursuant to the scheme and to fulfill the
8 elements of registering a false domain name, Count 23,
9 beyond a reasonable doubt.

10 I don't believe there is sufficient evidence
11 in the record to sustain beyond a reasonable doubt that
12 the elements of that count, both for the domain names
13 listed in paragraph 168 of the indictment or the domain
14 names for the money laundering counts in Count 21.

15 So that being the case, I would ask
16 specifically that counts — well, that all the counts be
17 dismissed, but I specifically would like the Court to
18 look at the proof that we have heard regarding Counts 2
19 through 13 and counts — and Count 23 and grant judgment
20 of acquittal accordingly.

21 Thank you.

22 THE COURT: I'm sorry. You said Count 23?

23 MR. GOLDBERG: That's correct, your Honor.
24 Maybe I said the wrong number.

25 THE COURT: Count 21 is the —

1 MR. GOLDBERG: I'm sorry.

2 THE COURT: — appears to be money
3 laundering, and then we have the enhancement.

4 MR. GOLDBERG: I had the numbers along the
5 side here. I'm sorry, your Honor. That's not a separate
6 count. It is the domain name enhancement.

7 THE COURT: Right. I just wanted the record
8 to be clear that your Rule 29 motion goes to all of the
9 counts, but specifically, you argued Counts 2 through 13
10 and the enhancement.

11 MR. GOLDBERG: Correct. And I'm sorry. I
12 argued it as a separate count.

13 It is the enhancement that applies to Counts
14 1 through 20.

15 THE COURT: Right. Thank you.

16 MR. LEVINE: It was actually 1 through 21.
17 We corrected that.

18 MR. GOLDBERG: Thank you. 1 through 21.

19 THE COURT: Who do I call on for the
20 Government?

21 MR. BROWN: Your Honor, it is the
22 Government's position that the testimony taken at trial,
23 the evidence offered and admitted into evidence right now
24 has satisfied the Government's burden at this stage of
25 the proceedings for all counts to proceed to the jury.

1 We believe that viewing the evidence and
2 testimony in a light most favorable to the Government
3 does allow the submission of all counts.

4 Looking specifically at Counts 1 through 13
5 and specifically 2 through 13, which Count 1 is the
6 conspiracy to commit wire fraud, and 2 through 13 are the
7 substantive wire counts, first of all, Count 1, the
8 Government would argue because it is a conspiracy based
9 on the testimony of the Romanian test of witnesses as
10 well as the witnesses Liam O'Murchu, Special Agent Ryan
11 Macfarlane, Special Agent Diaz and Owen Miller of AOL.

12 We've established there was a wire fraud,
13 specifically that there was a scheme to defraud to obtain
14 money via the wires and via posting fraudulent eBay pages
15 that were transmitted in interstate commerce.

16 And there were material representations and
17 concealments of material facts. We believe that the
18 Defendant or the witnesses who testified prove that the
19 Defendants on trial did have an intent to defraud, and
20 that as a group and as a conspiracy, they acted together
21 and in concert to obtain goods through wire fraud.

22 As to the material or the substantive Counts
23 2 through 13, the Government asserts that the testimony
24 of Donna Wolfe and Valentin Danet both establish a fraud
25 scheme.

1 Donna Wolfe testified to each of Counts 2,
2 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 in her role in the
3 fraud scheme, her role in receiving money, sending money
4 via mails and text directions overseas as part of that
5 fraud scheme.

6 Valentin Danet also testified specifically
7 to those schemes as well. We also believe that the
8 testimony of Special Agent Ryan Macfarlane in viewing the
9 account spreadsheet, which I believe is Exhibit 1741,
10 further when viewed in a light most favorable to the
11 Government supports the submission of Counts 2 through 13
12 to the jury.

13 I will also direct the Court's attention to
14 Exhibits 1735 and 2253, which were all testified to and
15 discussed by Donna Wolfe about those exhibits, relevance
16 and role in the wire fraud conspiracies.

17 As to the false domain enhancement, your
18 Honor —

19 THE COURT: Well, Mr. Goldberg specifically
20 argued lack of reliance.

21 MR. BROWN: Well, your Honor.

22 MR. GOLDBERG: Right.

23 MR. BROWN: And to that Valentin Danet
24 testified that he did each of the frauds on the amounts
25 on the spreadsheets, so we would rely on the testimony of

1 Valentin Danet to rebut those arguments, that he
2 specifically sent e-mails to the victims contained in
3 those counts to further the wire fraud scheme and to
4 create that reliance.

5 Then, turning to Count 21, to the
6 enhancement, which 3553 — 3559(g), excuse me — the
7 Government contends that testimony from both
8 Liam O'Murchu and Special Agent Ryan Macfarlane support
9 that they did review command and control servers, they
10 reviewed files within the command and control server, and
11 saw those domain names.

12 Special Agent Macfarlane, based on his
13 review of the testimony, he created that table, and he
14 collected that data for that table, so we believe that
15 the testimony of Ryan Macfarlane would support the
16 enhancement.

17 I am sorry, the testimony is based on his
18 review of the command and control server. That review is
19 what he based his table on, and we believe, based on that
20 testimony of that review, it would withstand a Rule 29
21 review.

22 MR. LEVINE: I just want to add one point
23 and the testimony of Liam O'Murchu that he saw, in fact,
24 a computer being instructed to reach out to communicate
25 with each one of the infected domains listed in paragraph

1 168 of the indictment.

2 And just to clarify with Mr. Goldberg, while
3 the Court found it was unnecessary to admit that exhibit,
4 because it was already part of the indictment, the Court
5 found that the most efficient way to proceed was to allow
6 it to be shown to the jury and to allow Mr. O'Murchu to
7 testify about it rather than me having to ask about each
8 domain individually.

9 THE COURT: This Court is well aware that I
10 must view the evidence in the light most favorable to the
11 Government, and I am not permitted to judge credibility
12 of any witnesses.

13 This Court is absolutely satisfied that the
14 Government has produced sufficient evidence on each and
15 every one of the 21 counts and the enhancement.

16 Going specifically to Mr. Goldberg's
17 objection regarding Counts 2 through 13, I absolutely
18 agree with the Government that based upon Donna Wolfe's
19 testimony and Valentin Danet's testimony alone, that is
20 sufficient evidence to let Counts 2 through 13 go to the
21 jury.

22 And regarding the enhancement, Mr. Levine, I
23 am in complete agreement with you. I did not admit it
24 but I certainly allowed testimony regarding the
25 indictment chart; regardless, the testimony of Macfarlane

1 and O'Murchu, their testimony supports the enhancement.

2 The Rule 29 motion is denied as to Defendant
3 Bogdan Nicolescu.

4 MR. GOLDBERG: Thank you, your Honor.

5 THE COURT: Mr. O'Shea?

6 MR. O'SHEA: Thank you, Judge. All right.

7 Judge, part of the argument I will make by
8 way of introduction, I know this involves computer
9 crimes, but the same rules apply that involve computer
10 crime, and my concern only, Judge, and I am just making
11 the argument, is that we don't relax our otherwise
12 overview for Rule 29 purposes just because computer crime
13 cases are harder to prove in a certain way because of the
14 complexity and the technological issues involved. That's
15 all I want to say.

16 I want to make that clear, that I don't
17 think — I think the same rules of engagement for Rule 29
18 purposes apply as they would in a murder case, in a drug
19 trafficking case, or anything else of that nature.

20 So I review from my own perspective the Rule
21 29 argument applying that macro rule of the road, if you
22 would, Judge. Not that you are not, Judge, but I am just
23 making the argument for the record.

24 Now, let me talk about the eBay scam, Judge,
25 Counts 2 through 13 to ratify a little bit about what

1 Mr. Goldberg said.

2 As the Court knows, the indictment in this
3 case is 53 pages long. Counts 3 through 13, we heard no
4 victim — I think we had on Count 2 DP come in, but that
5 was it. Page 20 of the jury instructions, Judge, as I
6 understand them — and these are parts that we agreed on,
7 let me see if I can pull mine up real quit, Judge —
8 item B on page 20 of the jury instructions, that requires
9 the Government to prove evidence as it relates to
10 Radu Miclaus, that the scheme involved a material
11 representation or concealment of material fact.

12 Again, I incorporate by reference
13 Mr. Goldberg's comments that we don't have the
14 individuals that are listed by initial only on Counts 3
15 through 12 and from different cities throughout —

16 THE COURT: And you are saying they had to
17 bring in each and every victim in order to prove those
18 counts? That's your position?

19 MR. O'SHEA: Or some evidence about those
20 particular victims who are human, presumably, relied on
21 some material representation or concealment of material
22 fact. They did not do so. That is clear.

23 So I believe, Judge, that again the rules
24 of engagement don't change because it is a computer
25 crime.

1 THE COURT: And I would never suggest that
2 the rules aren't the same.

3 MR. O'SHEA: I am not, Judge. I am just
4 making the argument because maybe it makes me feel
5 better, Judge.

6 But if we go to page 21 as well, Judge, we
7 talked, you know, item B, you see there the term false or
8 fraudulent pretenses, representations or promises
9 actually have to cite academic argument, they have to be
10 made to a human being.

11 They can't be made to a computer. A
12 computer obviously can't be defrauded. It has to be a
13 human being. Again, I believe in order for this case to
14 go to the jury as relates to Counts 2 through 13, again,
15 you need those human beings.

16 I concede that the logistics of getting
17 those folks in here could be complicated, but again,
18 I emphasize that doesn't change the rules of engagement
19 just because it is complicated to get them here.

20 THE COURT: And are you arguing that
21 there was no evidence whatsoever that was presented
22 during this trial regarding the victims in Counts 3
23 through 13?

24 MR. O'SHEA: Yes.

25 THE COURT: That's your argument?

1 MR. O'SHEA: That's my argument, Judge, and
2 again relying on the jury instructions that we have all
3 pretty much agreed on in order to facilitate that
4 argument, even further than Mr. Goldberg already
5 adequately did.

6 In addition to that, Count 14 has to do with
7 the computer fraud count, and Count 14 involves two — it
8 is like a two horned, you know, wild animal. They talk
9 about access to computers and damage to a computer.

10 I saw evidence, I will concede that there
11 was access to a computer, but I did not hear any
12 individual who owned a computer say that their computer
13 was damaged in some way. I didn't hear it, Judge. Maybe
14 I missed it.

15 There was a lot of volume here, but we can't
16 infer just because a person's computer may have slowed
17 down during some cryptomining, that it was damaged in
18 some way, and by damage, I take the normal definition of
19 something that needed repair that was destroyed or
20 something like that. I just haven't seen it, Judge.

21 I know that they were — they had 27, again,
22 victims named in Count 14 and another — and who they
23 claimed were infected with the Bayrob Trojan, another 48
24 people, human beings, again, Judge, that were punitive
25 victims of cryptomining.

1 But we didn't hear from those folks, Judge.
2 We don't know if their computer was damaged in any way.
3 We can't infer that.

4 So again, just because it is a computer
5 crime doesn't make it — I would say that certainly they
6 have produced no proof to get by for Rule 29 purposes on
7 this access element.

8 In addition to that, Judge, I think Count 14
9 is the one count from a conspiracy count standpoint where
10 you do need overt acts, and I don't see that they
11 produced any proof that Radu Miclaus individually, I
12 argue on his behalf, engaged in any of those overt acts
13 as set forth in the indictment itself, your Honor.

14 Lastly, as it relates to Count 14, there is
15 a breakdown between ten or more computers and the like.
16 Again, in order to differentiate — we just went through
17 this with the jury instructions between felony and
18 misdemeanor — certainly, the felony part doesn't get
19 through a Rule 29 part because, again, by my count, they
20 didn't call in 10 people that had been damaged or access
21 to their computers at all. We don't know. We can't
22 speculate.

23 It is like saying there were 10 or 15
24 victims of a store robbery, and they all got stuff
25 stolen, but we assume that they did because they were

1 standing around.

2 We only called one or two of them in, and we
3 will just assume that the other ones must have had stuff
4 stolen, too. I don't think because it is a computer
5 crime that we can change optics on this or the metrics in
6 any way.

7 So I didn't hear about 10 or more human
8 beings that came in here and said there were computers
9 either damaged or accessed. I think I only heard one or
10 two, Judge, and so that's my argument that relates to
11 Count 14.

12 Again, Counts 16 through 20 are the identity
13 theft counts, your Honor. Page 46 of the jury
14 instructions talks specifically about that each
15 Defendant, and I think the jury instructions use each
16 Defendant knowingly used somebody's ID.

17 Not a single human being came in here,
18 pointed to my client and said "that human being over
19 there, Radu Miclaus, knowingly used my ID without my
20 consent," not a single human being came in here and did
21 that; agent or layman; doesn't matter. Nobody did,
22 Judge. They probably could have done it, but they
23 didn't.

24 Again, just because it is computer crimes,
25 you can't say, just say, well, it is through online and

1 the internet and stuff like that you don't need to do
2 that. It is different than somebody swapping or stealing
3 a purse off the street with somebody and stealing their
4 property that way.

5 I guess if they are arguing that somebody's
6 identity was stolen, identity theft, but how can the
7 argue that if they don't have the person here? So again,
8 same argument.

9 Count 21, your Honor, as relates to that,
10 that's the money-laundering count, your Honor, that
11 specifies — I think in the indictment a time period,
12 Judge. I think, okay, and that time period is March
13 31st, 2013, to August 1st, 2013, and I will let the
14 Government respond to this with particularity if they
15 can.

16 As I see in the indictment, there were 12
17 e-mail acts that were supposedly done between 3-31 of '13
18 and 8-1 of '13. I don't see any of those, any proof that
19 those were done by anybody in the conspiracy or, more
20 particular, Radu Miclaus in any way. I just don't, and
21 maybe the Government can correct me if I am wrong here,
22 but I saw in Counts 21 a time period.

23 General time period, introductory
24 paragraph Y saying that, you know, 1-1-2007 to 7-6 of
25 2016, but when you get down to the red meat of Count 21,

1 they specify a specific date range. There is 12 e-mail
2 acts.

3 I think the date range, if I am not
4 mistaken, I don't know if they are all automatically
5 chronological. I think you kind of have to reach up to
6 them to get there, but I think the date range is 3-31-13
7 to 8-1 of '13. So I don't see any proof that my client
8 was involved in any of that, your Honor.

9 And again, I incorporate as it relates to
10 the false domain enhancement Mr. Goldberg's argument,
11 your Honor and, again, only the testimony of
12 Agent Macfarlane where he just said there is the chart
13 from the indictment, that those are the false domains.
14 If that's sufficient, I can't see it, Judge.

15 Last but not least, Count 15 is the
16 trademark count, your Honor. I have not seen any proof
17 at all that there were any trademarks used with
18 Radu Miclaus' knowledge, none.

19 Now, I know what they are going to argue,
20 they are going to argue this is a conspirator, right? So
21 that gets them by any direct proof, and anybody pointing
22 at Radu Miclaus is saying, "oh, you know, he was part —
23 we produced enough evidence that he was part of the
24 conspiracy. So therefore, anything that the conspiracy
25 did on any of the counts, that's sufficient to get by

1 Rule 29 purposes."

2 But there is a part of the jury
3 instructions, your Honor, that talks about conspiracy.
4 If you give me a second, Judge, again, Mr. Goldberg went
5 much faster than I thought he would, that talks about
6 what you have got to prove for conspiracy.

7 And I don't think the Government has it as
8 easy as they think they do when it comes to that, Judge,
9 again based on the jury instructions.

10 A moment please, Judge.

11 THE COURT: Sure.

12 MR. O'SHEA: For instance, on page 24 of the
13 jury instructions when it is talking about the agreement,
14 paragraph 2 says you don't have to have any formal
15 agreements, written or spoken, nor does it require proof
16 that everyone involved agreed on all the details, but
17 proof that people simply met together from time to
18 time to talk about common interests or engaged in
19 similar conduct is not enough to establish a criminal
20 agreement.

21 So I just don't see how, when it comes to
22 Mr. Radu Miclaus as it relates to Count 15, Judge, how
23 they proved that he engaged in any agreement on these
24 trademarks, nothing.

25 I think a lot of what you heard was

1 Mr. Nicolescu and how he is the creator of the code and
2 any viruses that were transmitted, that he was able to
3 mark up these documents and purportedly create a Wal-Mart
4 or an eBay or a Facebook or a Yahoo or a Google trademark
5 but nothing about Mr. Miclaus, nothing at all, and not
6 that he was at any meeting at any time in the past,
7 present where that was even discussed, you know,
8 nothing.

9 As far as — again, I limit my arguments,
10 Judge, for purposes of Rule 29, solely to what took place
11 in this courtroom. I know that my client proffered and
12 stuff like that, but as it relates to the evidence that
13 came from that witness stand, I listened carefully.

14 And I didn't hear anybody testify, including
15 Mr. Danet or any of those unindicted, uncharged
16 co-conspirators, that my client had anything to do with
17 any meeting involving trademarks, nothing.

18 And so I just don't know how that — you
19 could pin the tail on that donkey. I don't. I mean, I
20 know that conspiracy count or the conspiracy law draws a
21 broad light.

22 If we also look on page 28 of the jury
23 instructions — one moment — if you look at the bottom
24 of page 28 and top of 29, it starts out "this does not
25 require that the Defendant specifically agreed or knew

1 that the crime would be committed, but the Government
2 must prove that the crime was within the reasonable
3 contemplation of the persons who participated in the
4 conspiracy. No Defendant is responsible for the acts of
5 others that go beyond the fair scope of the agreement as
6 the Defendant understood it."

7 Now where, Judge, where-oh-where in this two
8 and-a-half-week long trial is there a single piece of
9 evidence that my client, Radu Miclaus, knew anything
10 about trademarks at all? I think, at best, they said his
11 job was by use of this e-mail stuff, was that he assisted
12 in money mules.

13 That's it, Judge. That's basically what
14 they claim, the theory of their case is, that was his
15 role responsibility, but as far as drafting up pages,
16 code, or anything else of that nature, nothing.

17 Now, I also know, Judge, that a couple of
18 their unindicted co-conspirators, one of which who
19 obviously had a much more significant involvement if you
20 believe him in this organization than Radu Miclaus did,
21 would simply say something — and Mr. McDonough would ask
22 the question — who else helped you commit computer
23 fraud?

24 That guy, Radu Miclaus.

25 That was it. There was zero specifics from

1 any of those unindicted co-conspirators, zero as to any
2 specific thing that Radu Miclaus did, zero. They just
3 simply said he was in, and that was it, flatline after
4 that.

5 They went into specifics as it related to
6 Mr. Nicolescu quite extensively, but as it related to the
7 actions of Radu Miclaus, nothing. They just said yep, he
8 was involved in a very vague, undated, non specific way,
9 period.

10 Now, I know we are going from our own
11 personal recollection of what witnesses heard for
12 purposes of Rule 29, Judge, but that can't be enough for
13 this conspiracy generally as it relates to Count 1.

14 As it relates to Count 14 and 15, again, it
15 is a conspiracy. They just said he was involved.

16 Now, I can tell you that I am not making
17 this argument with respect to the allegation that he may
18 have been involved with this money-laundering activity.

19 I did make an argument as it relates to the
20 time scope 3-31 to 8-1-13, but probably for the sake of
21 integrity to the argument that I am making is that I can
22 see that as relates to the money laundering and muling
23 business, that they were able to identify Mr. Miclaus as
24 having done some of that.

25 But as it relates to anything involving

1 coding, anything involving cryptomining, anything
2 involving placing a virus on someone's computer,
3 communicating with a specific person, including the
4 scandalous nasty things that were said to Mr. O'Murchu in
5 code, that, you know, they didn't really send e-mails.

6 They were planning those cute little
7 statements in code, there was nothing at all specifying
8 that my client had any involvement with that at all,
9 Judge, none.

10 And we also know that Mr. Danet couldn't
11 specify what specifically he did either. They just
12 couldn't be specific.

13 And I think the way I read those portions of
14 the jury instructions that I just cited to requires more
15 than just saying "yeah, he knew these guys, and he was
16 around and communicated with Nicolescu on a few occasions
17 and Danet on a few occasions."

18 But for witnesses to come in and say "yeah,
19 he was involved," the ones we heard in the last couple of
20 days, yeah, he was involved; no specifics, no dates, no
21 specific tractions, nothing.

22 And as a matter of fact, I know I got a
23 little ad nauseam about it, but the witnesses that they
24 did call in, that they were saying there is an e-mail
25 that I sent or I received or something like that, I asked

1 the witness: Do you even know what this document means?
2 If you saw it laying on the ground, would you know what
3 it means?

4 No.

5 That person clearly stated under oath I
6 would have to have someone point to stuff that happened
7 three, four, five years in order for me to even say that
8 that was me.

9 And I know that on a couple of those there
10 was this e-mail address only with no content that had a
11 Minolta 9797 on it, but this person had no idea what
12 e-mail content was, and they couldn't say specifically
13 that that was my client standing right there that did it,
14 nothing.

15 So the attachment from a conspiracy
16 standpoint, again, going by the jury instructions, is so
17 thin as to not be able to make it beyond a reasonable
18 Rule 29 argument.

19 Thank you, Judge.

20 MR. BROWN: Your Honor, which portion of
21 that would you like the Government to renew its arguments
22 for 1 through 13?

23 THE COURT: I think the Government should
24 address all of it.

25 MR. BROWN: Okay. Very good.

1 First of all, as soon as possible, with
2 respect to Count 21, Count 21 charges from — let me get
3 the exact date range here — from on or about January
4 1st, 2007, to the date of the indictment, and then it
5 lays forth the counts or with the specific charging
6 language and myriad dates in the conspiracy.

7 So the Government would argue that the
8 indictment is clear in the dates it is charging, which is
9 from January 1, 2007, to the date of the indictment.

10 THE COURT: Well, he was specifically
11 referencing — and I know Mr. O'Shea will correct me if I
12 am wrong — the e-mails from March 31 to August 1st,
13 2013. That's what Mr. O'Shea was specifically
14 referencing in Count 21.

15 Am I correct, Mr. O'Shea?

16 MR. O'SHEA: Yes, ma'am. They are listed in
17 the indictment.

18 MR. BROWN: And 1956(h), your Honor,
19 specifically does not have a requirement for overt acts.
20 So the way this is charged is proper under the charging
21 requirements of 1956(h).

22 Now, turning to — let's go to the wire
23 fraud and the wire fraud conspiracy and the substantive
24 wire fraud, again, the Government would adopt the
25 arguments it made in the Rule 29 challenge raised by

1 Defendant Bogdan Nicolescu specifically, which is, again,
2 we don't have to have victims present to testify.

3 The testimony of Donna Wolfe, the testimony
4 of Valentin Danet did establish both the substantive
5 counts and also the conspiracy as did the testimony of
6 Special Agents Diaz and Macfarlane about the conspiracies
7 to commit wire fraud.

8 I am trying to organize all these pages
9 here, I'm sorry.

10 The analysis of subsection D, the term of
11 false or fraudulent pretenses, representations, or
12 promises, there were no cars delivered. So the
13 Government would argue that those were known to be untrue
14 and made with reckless indifference to their truth.

15 I think every Romanian witness who testified
16 said that there were no cars that they ever — they
17 actually owned and were able to sell.

18 And those material facts, especially when
19 you look at Catalin Dima's testimony saying I believe
20 Valentin Danet's yesterday was that they would get the
21 picture and put them in eBay web pages to entice people
22 to buy them.

23 So we believe that those are intentional and
24 knowingly untrue statements that were used as fraudulent
25 or false pretenses and represent to be material facts.

1 So I think the argument under that
2 subsection B is addressed with, at least, those two
3 witnesses if not also Valentin Dima and Donna Wolfe.

4 The trademark arguments —

5 THE COURT: Okay. So wait.

6 So you have addressed Counts 2 through 13?

7 MR. BROWN: Yes.

8 THE COURT: How about going on to Count 14
9 then?

10 MR. BROWN: I was just about to go to the
11 computer charge.

12 THE COURT: Okay.

13 MR. BROWN: First of all, your Honor, this
14 conspiracy language — well, strike that.

15 The damage is as defined, impairment to
16 operation — where is the — I had it on one of these
17 sheets.

18 But we had Liam O'Murchu testify that his
19 machine was slowed down significantly. We had Donald
20 Patterson testify that he had to have a computer virus
21 removed.

22 We had Mr. Bertke talk about his cousin in
23 law, the computer guru who we did not call as a witness,
24 your Honor, or as an expert, testify as to removing
25 viruses.

1 We also heard from, I believe, Special Agent
2 Macfarlane talk about the effect of cryptomining in
3 general on computers, and I believe that was consistent
4 with the testimony of Liam O'Murchu who talked about the
5 slowness.

6 So we believe that the definition as
7 required in 1030 has been addressed, and again, that
8 damage is to intentionally impair without authorization,
9 integrity, availability of data, program systems, or
10 information as a result of transmission.

11 So again, they intentionally impaired
12 because the computer slowed down. I think we have
13 testimony showing damage, which would be an impairment,
14 and I am just trying to think of the witness, the 1028(a)
15 witness. It was maybe Allynn Stallings. And I am not
16 entirely sure they did get a computer glitch. She kept
17 getting a black screen. I believe that was her
18 testimony, your Honor. And it is also a multi-object
19 conspiracy.

20 So with the ten or more computers, I believe
21 we have ample testimony from Special Agent Macfarlane
22 about the number of computers he saw at any one time that
23 were being infected, and he did put time frames on all of
24 those.

25 So that was well in excess of ten in any

1 year. And I was just handed a note that it was Larry
2 Kuehl and Stallings who testified that they had to have
3 their computers cleaned.

4 Am I hitting all of the 1030s on conspiracy,
5 Count 14, or do we have trademark — can we move on to
6 15?

7 THE COURT: Count 14 specifically,
8 Mr. O'Shea argued no overt acts by MacFarlane.

9 MR. BROWN: Well, your Honor, it is a
10 conspiracy. It is a — we have a definition for
11 Pinkerton conspiracy as well.

12 Mr. Miclaus, I think we have testimony about
13 his involvement at virtually every stage of this. He was
14 always aware. We have the spreadsheet, which is 1741,
15 his getting material benefit from these things and his
16 ongoing and active participation, both in the auto
17 auction, and we have in 1854 and 1856 Minolta 9797
18 e-mails in many, if not the majority, of those e-mails
19 where they are talking about things such as Y pool,
20 .exe.dep, and other Bayrob functionalities.

21 So we believe that he was a knowing and very
22 active participant in every stage of the scheme. In
23 fact, I think we have testimony that the auto auction,
24 the way it worked was once the screenshot or once the
25 attachment was opened up, the virus was on, and he was

1 certainly involved in the auction stage.

2 So he was certainly doing a material act to
3 help spread the virus, therefore, to using the most
4 accepted for law school 101 definition of conspiracy. He
5 was involved in that conspiracy.

6 Going on to trademark, I think going back to
7 his use of auto auction and posting pages, which we see
8 again in 1741, where he listed over 900 on those pages
9 were eBay logos, eBay trademarks, which were — we had
10 testimony from Ms. Leavitt that eBay was a trademark
11 violation.

12 In a conspiracy count, those are more than
13 enough. We don't have to show that he was actively and
14 necessarily using Wal-Mart or other trademarks, but he
15 was using the eBay trademark without authorization, and
16 that definitely satisfies the Rule 29 analysis.

17 Aggravated identity theft, there are
18 challenges there. Each of those Defendants, quite
19 simply, testified that they were real people; that they
20 were harmed; that their information was found on a device
21 they had not given permission for; that personal
22 identifying information in addition to credit card
23 information that would be necessary to use that
24 information such as name, address, or in some
25 circumstances telephone number were found.

1 And the Government would assert that we have
2 established the identity of Minolta, the nickname Minolta
3 min to apply to Radu Miclaus; that it was in a chart
4 breaking down percentages of how to split money, mule
5 money, that satisfies his role in the money-laundering
6 conspiracy, which was testified to by Bogdan Antonovich
7 and many others in the sort of category of Romanian
8 witnesses.

9 Finally, with the 3559(g) argument, I
10 believe, again, as argued earlier, the testimony of
11 Ryan Macfarlane and his review of this command and
12 control server that creates a table, that satisfies any
13 challenge under Rule 29 in that regard.

14 Thank you.

15 THE COURT: I am going to reiterate for
16 purposes of this Defendant that the Court must view the
17 evidence in a light most favorable to the Government,
18 and I am not permitted to judge credibility of the
19 witnesses.

20 Frankly, Mr. Brown has set forth the
21 evidence accurately, and I agree with everything he has
22 just stated in terms of the evidence that the Government
23 has produced on each and every Count.

24 But I am going to address three major points
25 that Mr. O'Shea has brought up, and the first is, this

1 proposition that the victims had to be here in Court
2 personally to testify.

3 The Court simply doesn't agree. I believe
4 that the Government can produce sufficient evidence
5 through documents and other witnesses' testimony to
6 support the counts that deal with individual victims.

7 So I simply don't agree with this
8 proposition that a victim has to be present in Court and
9 testify in order for the Government to survive a 29
10 motion on any given Count.

11 I must state regarding this proposition that
12 there wasn't sufficient evidence as to Defendant Radu
13 Miclaus. The Court absolutely disagrees with that, and I
14 simply cite to generally the documentary evidence, and I
15 am well aware that this case is no different than a
16 murder case or a theft case in looking at a Rule 29
17 motion.

18 I have listened very carefully over the past
19 two weeks, and I could, in fact, go through all of the
20 documents that the Government has produced to support
21 each and every one of these counts, but I am not going to
22 do it.

23 I do believe that Mr. Brown has sufficiently
24 set forth the Government's position, and I agree with it.
25 But to say that there is no evidence of Mr. Miclaus being

1 part of each and every one of these conspiracies,
2 frankly, it is just wrong; again, looking at all of
3 the documents that have been admitted into evidence
4 here.

5 And finally, the statement that witnesses
6 came in and simply said Defendant Nicolescu was part of
7 the scheme and nothing more was said, well, the fact of
8 the matter is, on a Rule 29 motion, that is sufficient to
9 get the case to a jury.

10 And multiple witnesses came into this
11 courtroom and testified that they were a member of the
12 conspiracy to commit — and we will call it the general
13 fraudulent scheme — and that Mr. Miclaus was a member as
14 well. That, therefore, means this case goes to the jury.
15 The Rule 29 motion is denied.

16 Mr. Goldberg, are you presenting any
17 witnesses?

18 MR. GOLDBERG: No, your Honor. I think we
19 are going to offer the statements —

20 THE COURT: Let's go through each one if you
21 don't mind.

22 Are you offering Defendant's Exhibit M, and
23 this is a Defendant Nicolescu exhibit?

24 MR. GOLDBERG: I am not sure which one
25 it is. Excuse me. Do you have that? Let me make it

1 easy.

2 THE COURT: Sure.

3 MR. GOLDBERG: The only exhibits that we are
4 going to offer are Defendant's Exhibits Q —

5 THE COURT: Did you say Q?

6 MR. GOLDBERG: Q, S, T, and U.

7 THE COURT: All right.

8 MR. GOLDBERG: Along with their stipulated
9 translations.

10 THE COURT: All right. Q, any objection?

11 MR. McDONOUGH: Yes, your Honor.

12 THE COURT: Which one is Q?

13 MR. GOLDBERG: That's Valentin Danet.

14 MR. McDONOUGH: Your Honor, I believe that
15 he is referring to the Romanian DICOTT prosecutor's
16 questions and answers of the four Romanian witnesses and
17 trying to introduce those, which I believe is the subject
18 of his motion to admit examples of extrinsic evidence of
19 a witness' prior inconsistent statement.

20 THE COURT: So that is the February 19 —

21 MR. McDONOUGH: 19th.

22 THE COURT: — 2019 interview?

23 MR. McDONOUGH: Correct, your Honor.

24 THE COURT: And you are correct, this Court
25 does have before it an anticipatory motion for official

1 translation and admission of prior inconsistent
2 statements, and of course, that was filed this morning
3 before any of the testimony we heard today.

4 That motion is denied and will not be
5 allowed. I did, in fact, allow questioning regarding the
6 February 19, 2019, interviews. The case that Defendant
7 relies upon, United States v Harris, simply does not
8 stand for the proposition that extrinsic evidence, the
9 actual statement itself, comes into evidence.

10 In that case, it appears as if the witness
11 was not permitted to be examined regarding the prior
12 statement. I have allowed that, but it will not come in
13 as substantive evidence.

14 Again, any objection?

15 MR. McDONOUGH: Yes, your Honor. The
16 Government understands that like Exhibit Q, that this
17 is, again for another Romanian witness, this is the
18 February 19th interview in Romania for the same reasons
19 as Exhibit Q.

20 THE COURT: I will not allow it for the same
21 reasons.

22 MR. McDONOUGH: The Government would object
23 this is like another Q and S.

24 THE COURT: I will not allow in.

25 And U?

1 MR. McDONOUGH: The Government would object.
2 Again, this is another Romanian February 19th —

3 THE COURT: The Court will not allow.
4 Anything further, Mr. Goldberg?

5 MR. GOLDBERG: No, your Honor.

6 THE COURT: You do rest?

7 MR. GOLDBERG: We rest.

8 THE COURT: Mr. O'Shea?

9 MR. O'SHEA: We rest, no exhibits.

10 THE COURT: I have the jury instructions
11 ready. What I am going to do is give each one of you a
12 copy. I would like to meet with you tomorrow morning to
13 make sure there aren't any mistakes, any changes, and if
14 while you review them this evening, if you do find that
15 something is not right, please communicate with one
16 another so I know if there is any objection or if you
17 have an agreement, and then I can make the changes
18 accordingly.

19 So for today only, on behalf of the
20 Government, is there anything further?

21 MR. BROWN: And this is really minor, could
22 we make sure the VGA cable is here tomorrow morning?

23 MR. LEVINE: For opening, we had a VGA cable
24 that went from over there to here, and we had a little
25 closing. I did not realize we were going to use it in

1 closing.

2 THE COURT: You know what —

3 MR. LEVINE: Can we have the cable?

4 THE COURT: We will discuss this off the
5 record.

6 Anything for the record?

7 MR. BROWN: For the record, no.

8 MR. GOLDBERG: No, your Honor.

9 MR. O'SHEA: Oh, nothing further, Judge.

10 (Trial adjourned at 5:55 p.m.)

11 - - - - -

12 C E R T I F I C A T E

13 I, George J. Staiduhar, Official Court
14 Reporter in and for the United States District Court,
15 for the Northern District of Ohio, Eastern Division,
16 do hereby certify that the foregoing is a true
17 and correct transcript of the proceedings herein.

18 s/George J. Staiduhar
19 George J. Staiduhar,
Official Court Reporter

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